

*I have a next copy of Scobell's book with
many additions by a Deputy Clerk of the
House of Lords.*

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REMEMBRANCES

OF *Gal 6 J. C.*
Methods, Orders,

AND
PROCEEDINGS,

Heretofore used and observed in the

House of Lords:

Extracted out of the Journals of that
House. By *Henry Scobell, Esq; Cler.*
Parl.

To which is added,

The Priviledges of the Baronage of *Eng-*
land, both in and out of Parliament.
Collected by *John Selden, Esquire.*

L O N D O N:

Printed by *Henry Hills, Jun.* for *Matthew Gilly-*
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Hall, 1689.

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O F T H E
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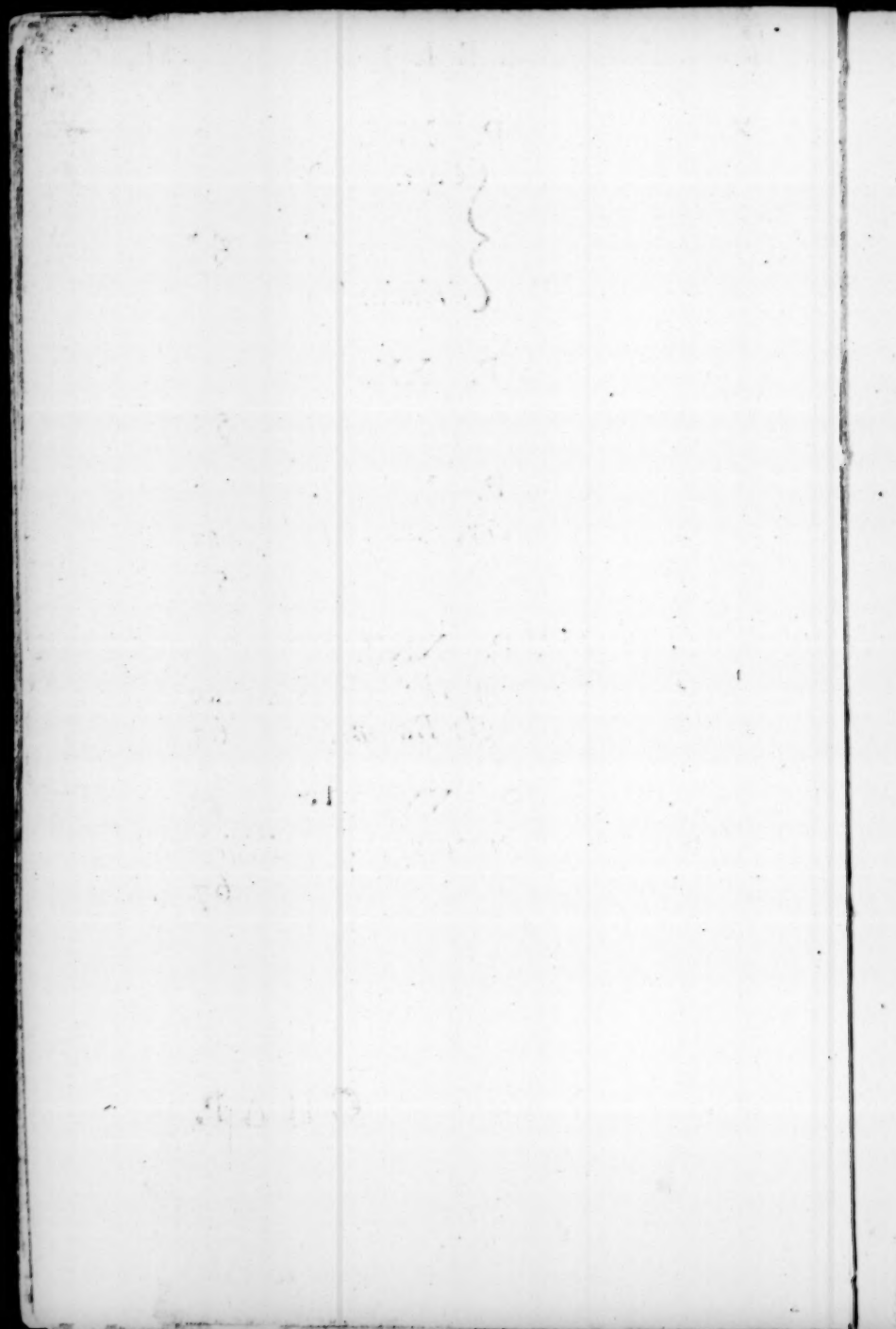
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CHAP. I.

The first Meeting of the Parliament.

WRits being issued for summoning a Parliament to meet at a day certain, in case the Meeting were prorogued, it was done by a Commission directed to both Houses; in which case the Lords being set in their places covered, the House of Commons sent for and come to the Bar, standing there uncovered, the Lord Chancellor or Lord Keeper being likewise (in respect he spake to both the Houses) uncovered, used to declare, That for some reasons the King or Queen had thought fit to prorogue the Parliament to a further day, and accordingly had directed a Commission under the Great Seal, which was read: And thereupon the Lord Chancellor or Lord Keeper, declared the Court to be prorogued.

If the Prorogation were occasioned by some Accident, so as it were put off for a day or two (as in 2 *Eliz.* when on the day appointed the Lords being met, notice was given to the Commons, who without any appearance of their Names taken by the Lord Steward

B

and

2 *The first Meeting of the Parliament.*

and Lord Treasurer (so the Entry is made in the Journal of the Commons) went up to the Lords House, where the Lord Keeper declar'd the Queens present Indisposition of Health, and had therefore sent a Writ to adjourn till the next day;) the same was done without a Proclamation.

But if it were prorogued for a longer time, a Proclamation was usually issued. So 18 *Jac.* the Parliament summoned to meet the 16th. of *January*, was by Proclamation prorogued to the 23^d. Nevertheless, the Lords and Commons met, and the same was prorogued by Writ, under the Great Seal, signed by the Kings Hand, and read in the Lords House; upon reading whereof the Lord Chancellor did pronounce the Prorogation. So 21 *Jacob*, 12 *Feb.* and 16 of *Feb.*

If no Prorogation were made, the Lords being met in the House, sitting in their Robes, and the King being present, the Gentleman Usher was sent to give notice to the Commons, who being come into the Room, the King sometimes himself, but commonly the Lord Chancellor or Keeper of the Great Seal, did declare the cause of calling the Parliament, and did signifie to the Commons the Kings Pleasure, that they should resort to their House and make choice of a Speaker, and present him to the King at a certain day then appointed.

C H A P.

C H A P. II.

The Sitting of the Members.

UPON the day of the meeting of the Parliament, the Lords took their places, according to the Order prescribed in the Act of Parliament of 31 Hen. 8. saving that the Lord Chancellor or Lord Keeper did sit on the Woofack as Speaker of the House, and the Lord Treasurer on the Earls Bench.

The manner of bringing into the House a Member called thereto during the Parliament, or who had not sat there before, may appear by this Entry in one Case.

Novemb. 20. 1622. This day the Lord Viscount *Colchester* being in his Parliament Robes, was brought into the House by the Earl of *Rutland* and the Lord *Houghton*, being also in their Robes, *Garter* King at Arms going before, and so was presented to the Lords, he delivered his Patent for his Creation to the Lord Keeper (*Garter* going before him, but the Earl and Lord *Houghton* staid before the Clerks Table) and received it again immediately, and so he was brought and placed by the said Earl and Lord on the Viscounts Bench, next the Lord Viscount *Fielding*. Two others

4 *The sitting of the Members.*

in like manner were brought in the same day.

In this was omitted one part of the Ceremony which was sometimes used, that next after *Garter* King at Arms there came the Earl Marshal, or some other Lord supplying his place.

In some Cases the Patent was read by the Clerk, before the Member brought in was placed.

C H A P.

C H A P. III.

The Speaker of the House.

THe Lord Chancellor or Lord Keeper for the time being, was by his Office Speaker of the House, managing the business of the House.

It was his Duty to declare (in case the King did not himself) the cause of calling the Parliament; and in case of prorogation, to declare the occasion of such Prorogation, and to cause the Writ to be read, and then to prorogue the Parliament.

In case the King were present, and did declare the cause of Calling the Parliament, yet ordinarily he did refer something to be spoken by the Lord Chancellor or Lord Keeper, who did also declare the Kings Pleasure, that the Commons should resort to their House, and chuse a Speaker, and many times appointed a time for presenting him to the King.

In case of Sicknels or other Disability of the Lord Chancellor or Lord Keeper, during the Parliament, the King did usually direct a Commission to the Lord Chief Justice of the Kings Bench, during pleasure, to supply the Office of the Lord Chancellor or Lord Keeper in that House, and to do in

6 *The Speaker of the House.*

all things as the Lord Chancellor or Lord Keeper should or ought to do, if he were present. See 25 Oct. 8. *Eliz.* upon occasion of the Sickness of Sir *Nicholas Bacon* Lord Keeper, a Commission was directed to Sir *R. Catlin*.

When the Speaker did speak to the House, he was alway uncovered; nor was he to adjourn the House, or to do any thing else at the mouth of the House; without the consent of the Lords first had, except the ordinary business about Bills (as preferring one Bill before another, or the like,) wherein the Lords might also over rule; and if therein, or in any thing else there were any difference, it was to be determined by a Question.

If the Speaker would speak to any thing in debate particularly, he was to go to his own place in the House (as an Officer of State,) and to speak there, and then to return to the place of Speaker.

C H A P. IV.

The first Days Work.

THe first Work either at the beginning of a Parliament or a Session, was to read a Bill, and then to name persons for receiving Petitions to the House.

Some were appointed for receiving all Petitions for *England, Scotland and Ireland*, others for Petitions from *Gascoigne*, and other Islands.

To each of these Services, there were usually appointed five persons of the Judges and other Assistants of the House, *viz.* to each, one of the Chief Justices or Chief Baron, two other of the Judges, and two Masters of the Chancery.

There were also appointed several Lords for Trial of these Petitions.

For the Petitions for *England, Scotland and Ireland*, were usually appointed the Lord Treasurer, Lord President of the Council, Lord Admiral, and other great Officers of State, and some others of the Nobility.

For the other Petitions divers Lords were appointed.

The Names of these were read by the Clerk.

On this day there used to be appointed a Committee to review the Orders of the House, and to take consideration of the Privileges of the Lords, and to see that from time to time the same were duly observed.

Of latter times a Roll was usually read, containing the Orders of the House, and then other business done.

C H A P.

C H A P. V.

Speaker of the Commons presented.

THe Commons having chosen their Speaker, he was presented to the King in full Parliament, (sometimes it hath been done at *White-hall* in the presence of the Lords and Commons, but ordinarily in the Lords House,) where he received approbation.

When a Parliament hath been prorogued, and the Speaker hath died in the interim, it may appear what the course hath been by these instances.

In the second Session of the Parliament held 2 *Eliz.* the Speaker of the Commons being dead, the House at their meeting sent a Message to the Lords, to be a means to the Queen that they might chuse another Speaker; which the Lords promised to do, desiring some of the Commons House, being of the Privy Council, might be joined, and the Lords named, the Lord Keeper, the Duke of *Norfolk*, the Lord Treasurer, and the Marquess of *Northampton*, to move the Queen therein.

The next day the Knights, Citizens and Burgesses, went up to the Lords, where was read a Commission directed to the Lord Keeper,

10 *Speaker of the Commons presented.*

Keeper, to intimate the Queens License to the House of Commons to proceed to the Election of a Speaker, whereupon Mr. Comptroller, a Member of the Commons, moved their Lordships, that *Richard Onslow*, Esq; the Queens Solicitor, might be restored to join in their Election as a Burgess for *Steining* in *Norfolk*. Upon consultation had among the Lords, he was sent down with the Queens Serjeant at Law and Attorney-General, to shew reasons against it, because of his Office and Writ of Attendance in the Upper-House; but it was adjudged he was a Member of that House, and was chosen Speaker.

The like was done in the third Session of the fourth Parliament of that Queen, upon the death of Sir *Robert Bell*, Speaker, who died during the Prorogation.

C H A P. VI.

Speaking in the House.

WHen any Member of the House did speak, he did address his Speech to the rest of the Lords in general, and not particularly to the Speaker.

He who did speak stood up uncovered, nor was he in his Speech to name any Member of the House, but by some reference; as, the Lord that last spake, or last but one, &c. or by some other signification.

June 13. 1626. Ordered, That to prevent misunderstanding, and for avoiding offensive Speeches in Debates or at Committees, all personal, sharp, or taxing Speeches shall be forbore; and whosoever answereth another Mans Speech, shall apply his Answer to the matter, without wrong to the Person.

And as nothing offensive is to be spoken, so nothing is to be ill taken: If the Party that spake shall presently make a fair Exposition or clear Denial of the words that might bear an ill construction. And if any Offence be given in that kind, as the House it self will be very sensible thereof, so it will sharply censure the Offender, and give the Party offended a fit reparation and full satisfaction.

C H A P.

C H A P. VII.

Deportment of Members and others.

NOne but Members of the House might be covered in the Room called the Lords-House, before the House sat, though it were the eldest Son of a Peer, unless he were called by Writ: Nor were any other Persons to stay there, nor any Attendant of any Nobleman, longer then whiles he brought in his Lord, and then retired.

The first or second day the House was usually called, and notice taken of such as were absent, who had not either sent their Proxies, or were not excused by the King for some time.

After the General Meeting, every Member coming after Prayers, was to pay a Mullet to the Poor, which was set by Order of the House.

None might absent himself at any time from the House, without making an excuse by some Member of the House; which Excuse if disallowed, the Person was either sent for, or reprehended when he came. By Order of 25 Feb. 1625. he was to pay Five Shillings to the Poor for every days absence.

When the House was set, every Member that entred was to give and receive Salutations

Deportment of Members and others. 13

tations from the rest, and not to sit down in his place till he had made obeysance to the Cloth of State.

The Members were to keep their Dignity and Order in sitting as much as might be, and not to remove out of their places without just cause, to the hindrance of others that sate near them, and disorder of the House; but when they must needs go cross the House from one side to the other, they were to make obeysance to the Cloth of State.

By Order of 23 *May*, 1628. none but Noblemen and the necessary Attendants of the House, were to come into the Lobby, nor the little Committee-Chamber.

If any Lord conceived himself to have received any Affront or Injury from any other Member of the House, either in the Parliament House, or at any Committee, or in any of the Rooms belonging to the Lords House, he was to appeal to the Lords in Parliament for his Reparation; which if he should not do, but occasion or entertain Quarrels, declining the Justice of the House, then he should undergo the severe Censure of the House; which was ordered to be a standing Order of the House, 9 *August* 1641.

C H A P.

C H A P. VIII.

Judges and Assistants.

THe Reverend Judges, or such of the Privy Council as were called by Writ to attend the House, did sit on Woofsacks, but were uncovered until the Lords gave them leave, which they did ordinarily signify by the Lord Chancellor or Speaker: Nor did they speak at any time, or deliver any Opinion until the same were required, and they were admitted so to do by the major part of the House, in case of difference about it.

The Judges were often appointed to be assisting unto Committees of the House upon Bills and other Matters: In which Cases of the Committee, refer any thing to the consideration of the Judges, they were to make report thereof to the Committee, and the Committee to report it to the House. This was agreed for an ancient Order of the House, *May 4. 1624.*

Sometimes the House hath referred it to the Judges, sometimes to the Kings Council Learned, to draw Bills in special Cases, sometimes to prepare Amendments to Bills, upon Debates in the House.

39 Eliz. 26 January, Upon reading a Bill for increase of People for Service and Defence of the Realm, the same being disliked, it was referred to the Judges, especially the Lord Chief Justice, to draw a new Bill.

27 January, Amendments drawn by the Lord Chief Justice to a Bill *against decaying of Timber and Houses of Husbandry*, were read and allowed, and the Bill ordered to be ingrossed.

The Kings Learned Council were ordered to prepare a Bill, *to make the Lands of the Earl of Middlesex subject to his Debts, to be liable to answer his Fine.* May 13. 1624.

43 Eliz. 12 Dec. Mr. Attorney-General reports a Conference with Committees of the Commons House, touching Amendments to a Bill for Patents.

C H A P. IX.

Clerk of the House.

THe Clerk was to enter no Order until the Lord Chancellor (or other Speaker) first demand the Assent of the House.

May 20. 1626. The Clerk is to read every Order first in the House before it be entred.

December 14. 1621. The House was moved, that no motion be entred as an Order, unless the Lord Keeper do first demand the Opinion of the Court, whether the same shall be allowed of as an Order, or no, and then the same to be set down as an Order and read, which was well approved of.

C H A P. X.

Bills and their Readings.

Bills have had their rise either in the Commons House, and so after they were ingrosed in Parchment, were sent up to the Lords by some of the Members of the Commons House, or else they did originally begin in the Lords House, whereof there are Presidents of all sorts (except Bills of Subsidy, or to charge the People,) especially Bills of Grace; as for Naturalization, Restitution in Blood, &c. In which case they were presented in Paper.

At the first reading, it was usually let pass without being spoken unto, unless it were for the rejection of it; but upon the second reading every Member had leave to speak, and then upon motion it was committed.

In any Debate upon a Bill, no Man might speak twice at the same reading of it, nor to any Proposition, unless for explaining himself in some material part of his former Speech, and that without adding any new matter; nor was such Explanation admitted without leave of the House first obtained.

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When any question was put, he who sate lowest began first to declare his mind; and so the rest every one in his turn, which he did by rising up uncovered, and saying, *Content*, or *Not content*: And if there were a doubt, it was determined by Poling, not by dividing the House.

Two Persons are appointed by the Lords to count the numbers.

Upon the passing of a Question, any Member of the House might enter his dissent. The time given for doing it, appears by an Order 5 *March* 1641. That such Lords as shall make protestation, or enter their Dissents to any Votes of that House, should make their said Protestation, or give direction to have their Dissents entred into the Clerks Book the next sitting day of the House, or else the said Protestation or Dissent to be void and of none effect.

At the second reading of a Bill (That the Lord *Mountjoy* might dispose of his Lands whereof he is Tenant in Tayl, as other Tenants in Tayl may do, by the Laws and Statutes of the Realm, a private Statute of 27 *Hen. 8.* to the contrary notwithstanding.) Upon motion of the Lord Marquess of *Winchester*, it was ordered the Cause should be heard openly in the House on *Monday* then next, by Council learned on both sides.

C H A P. XI.

Concerning Committees.

Committees were usually appointed for Bills, to the end there might be more freedom of Debate, as likewise upon other occasions of great business, to prepare the same for the House.

These Committees are either particular Persons named for that purpose, or the whole House turned into a Committee. If it were desired by any Lord that the House might be put into a Committee, it ought not to be refused, *per Ord.* April 18. 1626.

When the Committee of the whole House did sit, the Lord Chancellor or Lord Keeper did not sit upon the Woollack as Speaker, but in his proper place. Every Lord was to sit in his due place whiles the House is put into a Committee. If the Committee were of fewer number, they met in the Painted Chamber, or the little Room adjoining.

While any of the Committee did speak to the rest, he did it uncovered, but might sit still if he please.

If any of the Judges or Learned Council were appointed by the House to attend

20 *Concerning Committees.*

tend such Committee, they were not to sit or be covered, unless it were out of favour for infirmity sake; in which case sometimes such Judge had a stool set behind, but uncovered.

Committees have power by the ancient Orders of the House, to adjourn themselves *de die in diem*, as often as they please.
March 19. 1623.

C H A P.

C H A P. XII.

Proceeding on Bills.

VWhen Amendments were reported to a Bill, they were twice read, and if approved, the Question was put for the ingrossing the Bill so amended. The first Person named to be of a Committee, made Reports from that Committee. Sometimes Amendments reported, were referred back to the same Committees to be reviewed; as in the Amendments to the Act for erecting Houses of Correction. *Eliz. 39.*

November 2. In the Parliament begun in 43 *Eliz.* Amendments were reported to a Bill for Assurances of Lands. One of the Committees offered to speak to the Bill, and to the Amendments; thereupon a Doubt was raised, whether it might be done by the Orders of the House. And upon long Debate and Question, it was agreed, That any Committee might speak in like case, either to the Body of the Bill, or to the Amendments, upon bringing them in before the Bill be ingrossed.

Novemb. 21. In the same Parliament, upon reading the third time an Act for Assurances of Lands, objections were made to some points of the Bill. The House was

divided in opinion, whether it should be re-committed, which was put to the Question. The numbers being equal (being told by the Bishop of *London* and the Lord *Gray*, appointed by the Lords for that purpose) it was adjudged the negative should prevail, following therein the Rule of Law whereof the Lord Keeper made mention, that where the numbers of *Affirmatives* and *Negatives* are equal, *semper præsumitur pro negante*; and afterwards the Bill being put to the Question for passing, was rejected.

After a Bill was ingroed, the Clerk ought to indorse the Title thereof upon the back of the Bill, and not within: For want whereof, divers Bills sent to the Commons have been returned to be amended, as appears by the Journals of the Commons House, 27 *Eliz.* December 19. 13 *Eliz.* May 27. 39 *Eliz.* Octob. 24. 4 *Seff.* 1 *Par.* *Jac.* May 5.

If the Bill passed were originally begun in the Commons House, then ought the Clerk to write upon the same when it passed, *A cestte Bille les Seigneurs sont assentus.*

If it begun originally in the Lords House, the same was signed thus, *Soit Baille aux Communs.*

If any Proviso in Parchment were added thereunto after it were ingroed, then the Bill was to be signed thus, *Soit Baille*

Baile aux Communs, avecque un Provison annex
And the Proviso it self was signed thus,
Soit Baile aux Communs.

The like Rule was observed when any Addition (which containeth in it another Clause) or branch of the Bill was desired to be enacted and agreed after the Bill was ingrosed, saving that in this case, instead of the word *Provison*, the word *Schedule* was inserted.

Bills coming from the Commons have likewise three readings in the Lords House, in such sort as Bills originally begun there.

If upon the second reading the same were committed, the Amendments were to be set down in Paper by the Committee, with reference to the Line and the Words between which it is to be inserted, and so to be reported to the House, and if the House approve them, or make any alterations in them, then the same Amendments as they are agreed, are to be sent with the Bill to the Commons, to be accordingly by them amended, if they think good.

When a Bill is passed in either House, that House wherein the Bill remaineth, may desire Conference with the House that passed the Bill, if they think good, and not otherwise. So it was insisted on by the Commons in a Conference, 18 *Eliz.*

C H A P. XIII.

Messages and Conferences.

THe meeting of the Houses was either upon occasion of Messages, or upon Conferences.

When a Message was sent up from the Commons by some of their Members, notice thereof was given to the House by the Usher; and when the business in debate was ended, the Messengers were admitted in manner following: The Lords sitting all covered, the Messengers being entred into the Room, stood at the lower end thereof, then the Lord Chancellor, with such other Members as pleased, went down from their places to the middle of the Bar, whither the Messengers came; and after three Courtesies delivered their Message to him, who having received it, retired to his former place, and the Messengers withdrew.

The House being cleared and settled, the Lord Chancellor reported the substance of the Message to the House; any of the Members who went down with him might help his Memory, or rectifie him, if any thing were mistaken.

After the Lords had taken resolution, if the business required any Answer, the Messengers

sengers were either called for in, who approaching to the Bar with their three Courtiers, as before, (the House sitting in order and covered,) the Lord Chancellor sitting upon the Woolfack covered, gave them their Answer in the name of the House; or else if the resolution were not speedy, word was sent by the Usher, That they should not need to stay for an Answer, but the House would send it by some express Messengers of their own.

No Members of the House were at any time sent to the Commons upon message, but either some of the Learned Council, Masters of the Chancery, (who are there to attend) or, in weighty Causes, some of the Judges; but the Commons send no Message, but by some of their own Body.

In case of Conference with the Commons, such as were sent from that House at the time and place appointed by the Lords (which was usually the Painted Chamber,) being come thither, the Lords came to them all at once, and not scatteringly, which might take from their gravity, and prevent their places. The Lords did sit there covered, the Commons did stand bare during the time of the Conference.

None were to speak at such Conference, but those that were of the Committee; and whiles any thing that hath been committed
is

is reported, all the Lords that were of that Committee were to stand up.

At any Committee of the Lords, any Member of that House, though not of the Committee, might be present and speak, but had no Vote: As also, he was to give place to all that were of the Committee, though of lower degree, and to sit behind them. The same Order was to be observed for sitting at Conferences with the Commons.

No Man might enter either when the House sits, or at any Committee or Conference (unless such as were commanded to attend) but Members of the House, upon pain of being punished.

Jan. 19. In the Parliament begun 39 *Eliz.* several Members of the Commons were sent with a Message to the Lords, to receive satisfaction from the Lords, touching an Innovation lately begun (as it was said) in that House, that an Answer to a Message from the Commons was given by the Lord Keeper sitting in his place, and all the Lords keeping their places, and not going down to the Bar as their Use and Form hath been. Upon long debate, it was resolved by the Lords, That it was the Order and Usage of the House, when any Bills or Messages are brought from the Commons to the Lords, the Lord Keeper and the rest of the Lords, are to arise from their places, and to go down

to the Bar, there to meet such as came from the Commons, and to receive in that place their Message and Bills; But contrariwise, when any Answer was to be delivered in the name of the House, to such Knights, Citizens and Burgeses, as came from the Commons House, the said Knights, Citizens and Burgeses, standing at the lower end of the House without the Bar, the Lord Keeper is to deliver the same Answer sitting in his place with his head covered, and all the Lords keeping their places (the Archbishop, Lord Treasurer, Lord North, Lord *Buckhurst*, and especially the Lord Treasurer, who was the eldest Parliament Man, affirming this to be the ancient course.) With which Answer, after some Conferences with the Commons, they were satisfied.

C H A P. XIV.

*Sending Amendments from one House
to the other.*

WHEN the Lords send down Amendments to a Bill sent from the Commons, the Bill it self is not to be amended, but the Amendments are to be sent in Paper, expressing in what Line, and between what Words they desire the Amendments to be made, and the Bill with the Paper affixed thereunto, is to be sent to the Commons to be accordingly amended, if the Commons think good.

39 *Eliz. Decemb. 19.* The Amendments to the Bill for Labourers, were sent to the Commons ingrofed in Parchment; and for that Cause were returned by the Commons without Allowance. Thereupon the Lords ordered them to be written in Paper, and so sent down.

Where there is a Schedule of Additions, or a Provifo that ought to be sent in Parchment, and this subscribed, *A ceste Bille avecque les amendments les Seigneurs ont assentus.*

If the Lords, for explanation of any Sentence in Question, to add words to the addition of the Commons, without putting out of any part of that which is required to be added or altered by the Commons,
the

the same is to be set down in writing by the Lords, and sent to the Commons, together with the Bill: If the Commons do allow thereof, they are to add the words required by the Lords Paper, and so return the same to the Lords, who thereupon did enter it into their Bill ingrosed.

Amendments ought always to be in that House, from which the thing to be amended originally proceedeth, though the Directions for the Amendments came from the other House.

'This also is a general Rule, that neither House may put out any thing which they have before passed, otherwise than at the request of the House, who hath not passed the same.

In the Parliament, wherein Mr. Serjeant *Snagge* was Speaker, it was usual when either House desired the clear passing of any Bill, sent unto them from the other House, in which they thought fit to make Alterations, to acquaint the House from whom it came, with the Alterations which they intended to make, and to desire to know their willingness thereto, thereby to prevent the hazard of the Bill, if perhaps they should make Alterations not approved of.

In like sort they sometimes used Conferences, only to prevent the casting away of Bills, for some small difference about the Amendments.

The

The Lords by a Message without any Paper sent, have been prayed by the Commons to amend the sense of some of their Amendments, that so the House might further proceed therewithal; which hath accordingly been performed, and then their Amendments have been considered, allowed and returned, *23 Eliz. 17 Martii*. Bill touching Scottish Orders.

13 Eliz. in the Bill against Vagabonds, it was resolved by the Commons, That certain Words required by the Lords to be put out, should stand qualified with other Words, with condition, that if the Lords should not agree to the said Qualification, the Commons would not be bound by that resolution; which was done on purpose to avoid the hazard of the Bill, in case the Lords should not agree thereto.

2 & 3 Phil. & Mar. The Bill for Exactions of Musters, had a Proviso annexed by the Commons House, and the Lords returned the Bill, desiring the Proviso annexed might be taken off, and a new devised by themselves put in place thereof.

27 Eliz. 13 Martii. The Bill touching the Sabbath, which upon divers Conferences received several Additions, Alterations and Amendments of Amendments, by means whereof the same was much defaced, was sent down by the Lords, and prayed by them that it might

might be new written, (the same coming originally from the Commons) which was done, and so it passed again in both Houses

25 *Eliz.* 31 *Martii.* The Bill against Popish Recusants first passing from the Lords, was returned with Amendments, which the Lords assented unto, and sent down the same again amended by them accordingly, and also a Proviso annexed thereto to be passed, if the House should think good, which the Commons yielded to, and passed the same accordingly.

This is a remarkable President, that a Proviso should be added by them who first passed the Bill, without reference to any Alteration or Amendment, inserted by direction from the other House.

March 20. 1624. An Act touching Hospitals being begun in the Lords House, and been twice read and committed, and Amendments reported, and the Bill ingrossed, upon the third reading there appeared such defects in the Bill, as the House resolved to lay it a sleep, and ordered Mr. Attorney-General to prepare another; but some days after the House being informed, That it was against the Orders of the House to let a Bill sleep; but rather it should be sent to the Commons with a Note of the Defects, and a Commendation of a Supply of them: The Judges were appointed to consider of the

the Defects of the Bill, and the Remedies; which they having reported, the Bill was sent down with a special Message, touching the Defects, and the ways to supply them, by the Commons.

C H A P. XV.

Sending of Bills from one House to the other.

Bills sent from the Lords to the Commons, if they were ordinary Bills, were usually sent down by the Serjeants at Law, or Masters of the Chancery, accompanied sometimes with the Clerk of the Crown.

Bills of greater moment were usually sent down by some of the Judges Assistants there, accompanied with some Masters of the Chancery, who being admitted, came up close to the Table where the Clerk sitteth, making three Congies, acquainting the Speaker, that the Lords have sent unto the House several Bills, and read the Titles, and delivered the Bills to the speaker, and so departed with like Ceremony.

Bills sent from the Commons, are sent by one Member of that to whom they were

were delivered (who was usually attended with thirty or forty of the House,) who came in the first rank of his Company, to the Bar of the Lords House, with three Congies, and acquainted the Lords, that the Knights, Citizens and Burgeses of the Commons House, had sent unto their Lordships certain Bills; and then reading the Title of every Bill as it lyeth in order, so delivered the same unto the Lord Chancellor or Keeper (or other who is Speaker,) who with the rest of the Lords came to the Bar to receive them.

C H A P. XVI.

Touching the Royal Assent.

WHEN Bills were passed both Houses upon three several Readings in either House, all the Bills were presented to the King for his Assent; which was usually deferred till the last day of the Session, though it may be given at any time during the Parliament. And where it hath been doubted, whether such Assent given to any one Bill, doth not *ipso facto*, conclude that present Session (which if it did, then every other Bill to which the Royal Assent is not given, (though it have passed both Houses,) ought to be again read three times in either House, and to be proceeded in as if nothing had been done therein, and so all other Acts of the House) some Declarations have been made, that such Assent did not determine the Session. So in 1 and 2 Philip and Mary, Novemb. 21. And in the last Session of the first Parliament of King James; nevertheless, it is usual by some particular Bill or Provisio, to have the same enacted.

The Royal Assent was either given by Commission, according to the Statute of 33 Hen. 8. (which hath been frequently done,) or else in Person; in which case, the King being come to the Lords House and sitting there,

there, and the Lords being in their Robes, and the Commons came to the Bar, the Speaker of the Commons usually bringing with him the Bill of Subsidy only, (all other Bills being sent up to the Lords before) and presenting the same with a Speech: The Clerk of the Crown did read the Title of the Bills in such order as they are in consequence. After the Title of each Bill is read, the Clerk of the Parliament pronounceth the Royal Assent according to such Instructions as he had in that behalf received from the King.

If a Publick Bill were assented unto, the Answer was:

Le Roy le Veult.

If a Private Bill allowed by the King, the Answer was:

Soit fait come il est desire.

If a Bill not assented to:

Le Roy se avisera.

To the Subsidy Bill:

Le Roy remerci ses Loaulx Subjects, accept leur benevolence, & auxy le veut.

To the General Pardon:

Les Prelates, Siegneurs & Communs en cest Parliament assemblez au nome de tous vous autres Subjects remercient tres humblement vostre Majesty, & prient Dieu vous doner en toute bone vie & long.

C H A P. XVII.

Priviledges of the Lords, as to Suits against them and their followers.

THe Priviledges of special Rights belonging to the Baronage of *England*, (which includes all who were summoned to Parliament, wherein they had place and voice as incident to their Dignity) did concern them as they were one Estate together, or as every of them was privately a single Baron.

Of the first kind were most observable :

1. Their Priviledges in Suits, as well for their followers as for themselves, during the Parliament.

2. That none of them should be subject to be questioned before the House of Commons only.

3. Their Jurisdiction in matters of

}	Offences	{ Capital.
		{ Not Capital.
Errors in Courts.		

1. Their Priviledges in Suits appears thus : That whereas in a Bill under *Henry* the Fourth, it is shew'd, That the Lords, Knights, &c. and their Men and Servants, &c. by the custom of the Realm, were not to be arrested, or otherwise imprisoned ; and it was prayed, if any be, the Parties offending

against them and their followers. 37

fending may make Fine and Ransom, and give Damages, &c. The Answer thereunto is given in these words:

T ad sufficient remedy en lo cas.

In the Parliament, 1 *Elix.* *John Broxbam* being Plaintiff in an Assize in the County of *Lincoln*, against the Lord *Willoughby*, an Injunction was ordered to go out of the Chancery, *Sub pana 500 l.* that the Plaintiff should not proceed to Trial, *Feb. 21.*

18 *Edw. 1.* A Citation out of the Ecclesiastical Court was served on the Earl of *Cornwal*, as he was going to Parliament, at the Suit of *Bogo de Clare*, and the Prior of the Holy Trinity in *London*; for which, the said Earl used the Parties, and recovered 1000 Marks Damages.

Upon a Petition to the King in the same Parliament by the Master of the Temple, praying Liberty to distrain for Rent due to him for a House, which the Bishops of *St. Davids* held of him, alledging, That he could not distrain during the Parliament. The King gave this Answer: *Non videtur honestum quod Rex concedat quod illi de Consilio suo distringantur tempore Parliamenti, sed alio tempore distringat per ostia & fenestras prout moris est.*

No Lord of Parliament, sitting in Parliament, or within the usual times of Priviledge of Parliaments, was to be imprisoned nor restrained without Sentence or Order

38 *Priviledges of the Lords, as to Suits*

of the House, unless it be for Treason or Felony, or for refusing to give Security for the Peace. *April 18. 1626.*

How far the Priviledge of the Nobility doth extend, concerning the Freedom of their Servants and Followers from Arrests, is set down in several Resolutions of the House, and a Report of a special Committee appointed for that purpose, *viz.* That it extends to all their Menial Servants, and those of their Family, as also those employed necessarily and properly about their Estates, as well as their Persons. That this Freedom is to begin from the date of the Writ of Summons in the beginning of every Parliament, and to continue twenty days after the Parliament.

Before any Person be sent for upon Breach of this Priviledge, the Lord whom the Person arrested doth serve, shall by Word, Letter or other Message, certifie the House upon his Honour, that the Person arrested is within the Limits of the Priviledge aforesaid. If upon examination it appear otherwise, the Member was to be reprov'd, and the party complaining to pay the Fees of the party sent for, and to have no benefit by the Priviledge. *May 28. 1624.*

The Goods of priviledged Persons taken in execution, were to be re-delivered and freed

against them and their followers. 39

freed as well as the Person. *May 8. 1628.*

The King having declared his Resolution to adjourn the Parliament from the *4th* of *June, 1621.* to the *14th* of *November* following, it was moved in the House, That the Lords followers might during the Session, have priviledge from Arretts; which was referred to the Judges to advise thereof, and deliver their Opinions therein.

June 4. 1621. The Lords the Judges delivered their Opinions touching the Priviledge of the House during the Session of Parliament, the Lords repair hither, and there return; but for that it hath not happened to their knowledge, that heretofore the House hath been adjourned for so long time as now it is intended, they could not satisfie their Lordships of any Presidents of the Continuance of their Priviledges, during all the time of the long Session. Whereupon the Lords delivered their Opinions, and ordered it so to be entred, That the Lords do know that the Priviledges of Themselves, their Servants and Followers, do continue, notwithstanding the Adjournment of the Parliament, and do order and adjudge the same to be observed in all points accordingly; and that a Copy of this Order be sent to both the Counters, and to be published.

40 *Priviledges of the Lords, as to Suits*

Upon Complaints made against any Person for arresting any Servant of the King, or of any of the Lords contrary to the Priviledge, the Offenders were usually sent for by the Serjeant at Arms, and brought to the Bar; and if upon examination it appeared to be done knowingly, they were committed during the pleasure of the House, who upon Petition and Submission of the Party, did afterwards discharge them.

However, the Person arrested was either sent for by Warrant of the House, if it were on mean Process; or if upon Execution, then by *Habeas Corpus cum causa*, and the Priviledge appearing, were set at liberty by the House.

39 *Eliz. William Vaughan*, Servant to the Earl of *Shrewsbury*, was contrary to the Priviledge taken in Execution: The Keeper of *Newgate* was ordered to bring him before the Lords in Parliament; he refusing, Presidents were directed to be viewed, and upon consideration of them, an Order was made, That the Lord Keeper should cause a Writ of *Habeas Corpus cum causa*, to be issued for bringing him, which was done accordingly.

21 *Jacobi*. Upon Complaint that *John Philips*, Esq; one of the Kings Servants, was arrested contrary to the Priviledge, an *Habeas Corpus cum causa* was Awarded; upon which

against them and their followers. 41
which he was brought to the Bar, and released by the Court.

14 March, 21 Jacobi. *Edward Terringham*, Servant to the Lord *Cromwel*, being arrested on mean Process, a Warrant was signed by the Clerk to the Serjeant at Arms to bring him before the Lords, and being brought the 15th. of May, he was discharged.

The same day *Wellisborn Hill*, Servant to the Earl of *Holderness*, being taken upon an Execution, was upon a Writ of *Habeas Corpus cum causa*, brought to the Bar and discharged, and the Party at whose Suit he was Arrested, was committed.

C H A P.

C H A P. XVIII.

Peers not to answer in the Commons House.

THAT no Peer was to answer in the House of Commons, some instances are to be seen in a Complaint of *Thomas Philips*, against the Bishop of *London*, 25 *Hen. 8.* in the case of the Bishop of *Bristol*, who had written a Book about the Union between *England* and *Scotland*, which was conceived to intrench on the Honour of both Houses, and was complained of by the Commons in the Lords House, as they acknowledged in their Message he ought to be, 1 *Jac. 26.* and 31 *May.*

Yet in *April 1624.* the Commons being upon a Charge in their House against the Earl of *Middlesex*, Lord Treasurer, upon his desire to the Commons, That he might first be heard, the Lords gave him leave to send his Answer to that House in writing; but at the same time it was set down as an Order, That no Lord of their House might without leave of the House answer any Complaint in the House of Commons, neither in Person nor by his Council.
April 12. 1624.

C H A P.

C H A P. XIX.

The Power of Judicature.

FOr the Jurisdiction or Power of Judicature, in cases as well Capital as not Capital, tending to the publick mischief of the State, many instances are found.

1. Of Capital Offences in the case of *John Mantravers*, accused for being guilty of the Death of *Edmund* Earl of *Kent*, uncle to *Edward* the Third, he had Judgment to be drawn and hanged as a Traytor. 4 *Edw.* 3. M. 7. N. 3.

William Wiston had the like Judgment, to be drawn and hanged for delivering up a Castle. 1 *Rec.* 2.

And in the same Roll is a Judgment against *John Sire de Gomenys*, to be beheaded.

Of Offences not Capital.

John Atlee accused of several Offences, to the wrong of the King and his liege People, 42 *Edw.* 3. to which he could make no sufficient excuse, he was commanded to the Tower, there to remain in Prison until he should make Fine and Ransom at the Kings Pleasure.

Richard Lyons accused by the Commons of several Decits, Extortions and other Evil Deeds against the King and his People, viz.
Procuring

Procuring Patents for private Advantage, New Impositions to be laid without Parliament, &c. For which he was adjudged to Prison, to be put to Fine and Ransom at the Kings will, that he lose his Freedom in the City of *London*, that he never be more in Office, nor approach the Council, nor the Kings House; and afterwards as an addition to the said Judgment, it was awarded by the Lords, That all his Lands, Tenements, Goods and Chattels, should be seized into the Hands of the King, and his Body committed to Prison during the Kings Pleasure, 50 *Edw. 3. M. 2. Num. 17.*

William Lord Latimer accused by the Commons of divers Deceits and Exactions, and for procuring and counselling the King to grant Patents against the Laws, new Impositions, &c. he was adjudged to the Marshalsey, and to pay Fine and Ransom at the Will of the King, *ibid N. 21.*

7 *R. 2. Michael de la Pool*, Chancellor of *England*, being complained of by *Joan Cavendish* for Bribery, it appearing that the Accuser had calumniated the Chancellor, she was committed.

Upon a Charge against *Sir Giles Mompesson*, Knight, for the undue execution of a Grant, for the sole Manufacture of Gold and Silver Thred, and of a Grant for Concealments.

The

The Lords gave Judgment against him, *March 26. 1621.* That he should stand and be henceforth degraded of the Order of Knighthood, with reservation of the Dignity of his Wife and Children, the Ceremonies of Degradation to be executed by the direction of the Earl Marshals Court whenever he should be taken.

That he should stand perpetually in the degree of an Outlawed Person for Misdemeanor and Trespass.

That his Testimony shall be received in no Court, he should be of no Assize, Inquisition or Jury.

That he should be excepted out of all General Pardons hereafter to be granted.

That he should be imprisoned during life.

That he should not approach within twelve Miles of the Kings Court, nor of the Courts of *Westminster.*

That the King should have all the Profits of his Lands for life, that all his Goods and Chattels should be forfeited, that he should undergo Fine and Ransom, which the Lords assessed at Ten thousand pounds.

That he should be disabled to hold any Office, that he should be held an infamous Person.

The Lord Chancellor *Bacon* upon a Charge against him for Bribery and Injustice, the Lords gave Judgment against him, 3 *May 1621.* That

46 *The Power of Judicature.*

That he should undergo Fine and Ransom, which was assessed at 40000 l.

That he should be imprisoned in the Tower during the Kings pleasure.

That he be for ever incapable of any Office, Place or Imployment in the State or Commonwealth.

That he should never sit in Parliament, nor come within the Verge of the Court.

The Earl of *Middlesex* Lord Treasurer, upon a Charge against him of Bribery, for Altering the good Laws of the Court of Wards, to the deceit of the King, Oppression of the People, and enriching of his own Servants, and other Crimes.

The Lords gave Judgment against him,
May 13. 1624.

1. That he should lose all his Offices.
2. That he should be incapable of holding any hereafter.
3. That he should be imprisoned during the Kings Pleasure.
4. That he should be fined 50000 l. to the King, that he should never sit in Parliament hereafter, nor come within the Verge of the Court.

The Kings Council Learned were ordered to draw a Bill to make his Lands liable to Debts, and liable to pay the said Fine. Damages were also given to several Persons wronged. Of

Of this sort are many instances of latter times; as in the case of Sir *John Bennet*, Sir *Henry Telverton*, Doctor *Montagu*, and others.

Some Examples there are of Censures for corporal Punishment: As,

May 26. 1621. *Edward Floud* a Lawyer, being accused of Scandalous Words, tending to the disgrace of the *Palgrave*, was after examination brought to the Bar, and charged by Mr. Attorney-General, and censured as followeth:

That he should be incapable to bear Arms as a Gentleman, that he should be held for an infamous Person, his Testimony should not be taken in any Court or Cause.

That he should ride on Horse-back with his face towards the Horse Tail, holding the Tail in his hand to *Cheapside*, and there to be set on the Pillory, and branded with the Letter K.

That on another day he should be whipped at a Carts Tail, from the *Fleet* to *Westminster-Hall*.

That he should pay 500 *l.* Fine, and be imprisoned during pleasure.

The Clerk signed a Warrant to the Sergeant at Arms, and Warden of the *Fleet* to see it executed, with a Clause to the Sheriffs of *London* and *Middlesex*, and all other Officers to be aiding and assisting.

May

48 *The Power of Judicature.*

May 30. 1621. The Prince moved the House, that the punishment of Whipping; and all that belonged to it to be inflicted on *Edward Floud* on Friday then next, might be suspended and forborn, until the pleasure of the House were further known; and the rest of the Punishment to be executed according to the former Order: and thereupon an Order was made; That hereafter when any Censure beyond Imprisonment shall be agreed on, Judgment thereupon be not given on the same day; but another day be taken to consider thereof before any Judgment be given.

These Judgments have been grounded upon Charges, sometimes exhibited by the Commons House to the Lords, sometimes upon Charges directed by the Lords themselves; as in the case of the Earl of *Middlesex*.

A Committee being made by the Lords to consider of Munitions, &c. When the Committee was to make their Report, a Question was made, Whether by the Orders of the House, the Lord Treasurer might be present when it was read, for that it concerned his Honour. It was agreed, he might be present at the first reading; but not when the same should be debated or handled by the House, April 12. 1624.

A Charge

A Charge was directed to be drawn up against him by the Committee.

April 15. There was a Message from the Commons for a Conference touching divers Complaints against the Lord Treasurer, which the Lord Keeper reported to the House from that Conference.

April 24. 1624. It was resolved, That by the ancient Customs of the House, the party accused is to receive his Charge at the Bar.

April 27. 1624. The Lord Treasurer petitioned that Council might be assigned him; this being referred to a Committee of the House, they reported, That they had perused many Presidents, how Parties complained of here have answered, and that they had not seen any President, that any, though a Member of this House, did answer by his Council, and that Council was denied to *Michael de la Poole*, Lord Chancellor, 10 *Rich.* 2. when he required the same.

Thereupon Answer was given to the Lord Treasurer, That he might use what Council he pleased to advise him for his defence, but it stood not with the Orders of the House to allow Counsel at the Bar in this Case.

When the Lord Treasurer came to the Bar to hear his Charge, it was resolved he was to kneel. He came also without his Staff.

The Witnesses are sworn at the Bar, and a Committee with some of the Judges, to attend them, appointed to take the Examinations, and many times Examinations are had, before the party accused answer; yet it was resolved, *April 28. 1621.* That it is against the Orders of the House, that a Delinquent should have Copies of Examinations before an Answer.

May 3. 1624. It was ordered, That Publication shall be made in a reasonable time before the Party accused make his final Answer; and that after Publication he may have Copies freely of all Witnesses, as well against him as for him.

In all Causes as well Civil as Criminal and Capital, the Defendants if they shall demand it of the House in due time, shall have their Learned Council to assist them in their Defence, whether they be able by reason of Health to answer in Person or not, so as they chuse Council void of just Exception; and if such Council shall refuse them, they are to be assigned as the Court shall think fit. See the Roll of Orders.

At the final hearing of the Cause, the Delinquent is brought to the Bar, and there to kneel till the Lord Keeper bid him stand up.

If

If the Accusation come from the Commons, some of their own Members manage the Evidence and Reply.

If it begin in the Lords House (as that against the Lord Treasurer) the Kings Council did it. So Mr. Serjeant *Crew* opened the Charge against Sir *John Bennet*.

When the Cause is fully heard, the Lords come to a Resolution among themselves touching the Sentence; and that being done, they send to the Commons to let them know they are ready to give Judgment.

In the Case of the Earl of *Middlesex* Lord Treasurer, though the charge was by Order of the Lords House (the Commons also having made some Complaints) yet a Message was sent to the Commons, that the Lords were ready to give Judgment against him.

The Lords being in their Robes, the Lord Treasurer was brought to the Bar by the Gentleman Usher and Serjeant at Arms, and kneeled till he was willed to stand up. Then came the Commons with their Speaker, the Serjeant at Arms attending the Speaker, immediately put down his Mace, and the Speaker in the name of the Commons demanded Judgment, which was accordingly pronounced by the Lord Keeper.

May 20. 1620. Ordered, That at the least once before the end of every Session, the Com-

mittees for the Orders of the House, and Priviledges of the Lords in Parliament, do acquaint the Lords with all the Fines that have been laid that Session, that thereupon their Lordships may use that Power which they justly have to take off or mitigate such Fines, either wholly or in part, according to the measure of the Penitency or Ability in the Offenders, or suffer all to stand, as in equity their Lordships shall find fit. And that until every Session be ended, no Estreat be made of such Fines set or imposed by Parliament, nor any Copy thereof to be made by the Clerk without special Order upon publick motion in full House. See Order, *April 3. 1624.*

May 28. 1624. Upon a Report from the said Committee, the Fine of 1000 *l.* imposed in that Session upon *John Merley*, was mitigated to 500 *l.* being imposed for a scandalous Petition.

The same time the Fine of 500 *l.* imposed on *David Waterhouse*, for penning the said Petition, was taken off.

In the Parliament 21 *Jacobi*, the Lord Treasurer moved the House, that a Writ of *Certiorari* might be awarded to the Clerk of the Parliament, to certify the Fines imposed in that Parliament upon *Giles Mompeyson*, late Knight, *Francis Viscount St. Albans*, late Lord Chancellor, Sir *Henry Yelver-*
ton,

ron, Knight, *Francis Michel* late Knight, and *Edward Floud*, which was ordered accordingly.

C H A P. XX.

Writs of Error. See post 129. J. Rep. on Just. Priv. of Parliament.

IF erroneous Judgment were given in the Kings Bench, or in the Exchequer Chamber, upon the Statute of 27 *Eliz. cap. 8.* the Party grieved had a Writ of Error returnable in Parliament, but not on Judgment given in the Common Place, until the same were reversed or affirmed in the Kings Bench. So it was answered in Parliament in the case of the Bishop of *Norwich*, *Rot. Parl. 50. Edw. 3. Art. 48.*

Upon the Writ of Error the Lord Chief Justice is to bring in the Record, and a Transcript of it into the Parliament, and there to leave the Transcript, but carry back the Record. And thereupon the Errors being assigned (or as some Examples are, before the assigning of Errors,) Order is to be given that a *Scire facias* be awarded against the Defendant, upon whose Appearance and Examination of the Errors, the Judgment is either affirmed or reversed.

After the Record thus brought in, *Clericus Parliamenti habebit inde Custodiam, & per Dominos tantum & non per Communitatem assignabitur Seneschallus qui cum Dominis Spiritualibus & Temporalibus per consilium Justiciariorum procedent ad errorum corrigendum, 1 H. 7. fo. 20. in Flowderden's Case.*

The Manner of proceeding herein appears in the Parliament Roll of 27 *Eliz.* Num. 40.

May 24. 1621. *Nicholas Stafford* an Irishman, brought a Writ of Error in Parliament to reverse a Judgment in the Kings Bench, wherein *John Stafford* an Irishman, was Defendant, touching Lands in Ireland. A Question was thereupon moved, to what Sheriff the Writ of *Scire facias* should go, whether to the Sheriff of *Middlesex*, or to the Sheriff of that County in Ireland, where the Land doth lye. This was referred to the Judges.

Who upon the 25th. day made report, That a Writ ought to be directed by Warrant from the Lords House to the Chief Justice of the Kings Bench in Ireland, requiring him by Writ out of that Court, to command the Sheriff of the County of *Wexford* (where the Lands in question do lye,) to give notice to the party Defendant to make his Appearance here in Parliament at a certain day appointed, to hear the Errors. Which was accordingly ordered; but the Plaintiff

Plaintiff was directed to assign the Errors before the Writ should issue.

In the Parliament 21 and 22 *Jacobi*, the Lord Chief Justice brought in the Record of a Judgment given in the Kings Bench, between *William Mac Donnogh* Plaintiff, and *John Stafford* Defendant in *placito transgressionis & ejektionis firmæ*, for Lands in the County of *Wexford* in *Ireland*.

The said *William Mac Donnogh* appointed *Thomas Farrar* to be his Attorney against the said *John Stafford*.

The Lord *Noel* and the Lord *Mountague* received the Warrant of Attorney, and delivered the same to the House; and then the said *Thomas Farrar* assigned the Errors, and delivered the same. Whereupon it was ordered, That his Majesties Writ be awarded and directed to the Lord Chief Justice of the Kings Bench in *Ireland*, commanding him that he grant a Writ of *Scire facias* under his Majesties Seal of the Kings Bench in *Ireland*, unto the Sheriff of the County of *Wexford*, to warn the said *John Stafford* Gent. to appear before their Lordships at the next Session of Parliament here in *England*, to hear the said Record and Process of Error in the said Judgment, given in the Kings Bench here in *England*, between the said *William Mack Donnogh* and the said *John Stafford*, *pro eisd. transg. & ejectione firmæ, eid.*

Willielmo per præfat. Johannem illat. Which was agreeable to the former President grounded on the Opinion of the Judges.

And accordingly the Clerk signed a Warrant directed to *William Ravenscroft* Esquire, one of the Clerks of the Petti-bag to make the said Writ.

July 6. 1625. The Lord Chief Justice brought in a Writ of Error to reverse a Judgment given in the Upper-Bench on behalf of *Thomas Crouch* against *Edward Haynes*, and delivered the Record and Process to the Lord Keeper.

At the Rising of the House the Record was carried back again, and the Transcript delivered to the Clerk with the Petition signed by the Kings Hand.



C H A P. XXI.

Decrees in Chancery, and Relief on Petitions.

Petitions have been presented, containing Complaints against Decrees and Proceedings in Chancery, either charging Corruption or Injustice, or both, for Delays or irregular Proceedings.

Upon Consideration of those Petitions, the Lords Referees for Petitions did usually make Orders to refer it back to the Lord Chancellor or Lord Keeper, if the Complaint were not against him; and sometimes did give Direction touching Proceedings for the Petitioners Relief in particular Courts, which Answers were reported to the House, and there approved.

The Parliament being shortly to adjourn, *June 4. 1621.* The Earl of *Bridgwater* first of the Committees for Petitions, reported to the House, That they had considered of some particulars, and answered them, but the time not permitting their Lordships to answer them all, they had agreed what Answer the Clerk should make unto them, &c.

1. No Suits to be stayed in Courts of Justice upon pretence of Petitions exhibited in Parliament, and unanswered.

2. Decrees not to be reversed upon Petitions exhibited in Parliament without the hearing of Counsel on both parts.

3. Reviews to be made where the Judges of the Courts, upon consideration of the Petitions, shall find cause sufficient, or otherwise to certify the House what further Course may be taken with the Petitioners.

The Petitions to be kept by the Clerk of the Parliament, and he to attend the Judges of the Courts as the Petitions were called for, and to resume the Petition from the Judges, to be kept with the Judges Resolution thereupon signified, and to present the Petitions again to the House at the next meeting.

Which Directions being read, the House ordered the same to be observed accordingly."

If the Complaints were charges of Crime against the Judges themselves for Corruption or Injustice, the manner of Proceedings was, as is set down in the Lord Chancellor *Bacon*, the Lord Treasurer Earl of *Middlesex*, against whom also Damages were awarded to be given to the particular Persons wronged.

If

If the Complaint were against the Decree it self, and Relief sought against the Party on whose behalf it was made, there were usually Bills preferred for reversing those Decrees, or other Course taken, as appears in the Cases following:

Die Lunæ. 3 Decemb. 1621.

The Lord *Sheffield* presented to the House a Petition from Sir *John Bourchier*, which was read *in hæc verba*:

To the Right Honourable the Lords Spiritual and Temporal in the High Court of Parliament assembled.

The humble Petition of Sir *John Bourchier*,
Knight;

Humbly sheweth,

THAT the Petitioner bought a Lease of 45 *Eliz.* by which he was to have for 21 years 100*l.* *per Annum*, and for securing thereof had a Recognizance of 1400*l.* yet by Extents, and other deceitful and indirect dealings, hath in all the times past received only 600*l.* most of which he hath been forced to spend in Suits.

And

And being lately possessed of Lands by Ex-
tent under the Great Seal of *England*, lyable
to the said Recognizance of 1400 *l.* by occa-
sion whereof there were cross Suits in Chan-
cery between the Petitioner, one *John Mom-*
peyson and others appointed to be heard the
Fifth of *November* last, before the Right Ho-
norable the Lord Keeper, who hasting the
Order by reason of the day, made the same
very greatly to the Petitioners prejudice,
who that afternoon petitioned his Lordship
for a further hearing, that the proofs extant
in the Court might be read, which then was
by the shortness of time and suddenness of
the Order prevented, which though his
Lordship denied, yet allowed your Petition-
er his Appeal to your Lordships. Since
which time the Petitioner both by himself,
and some others, hath in all Humility
sought to be heard; offering to lose what is
already Decreed, if his Lordship take true
notice of the Cause, found not reason in
Justice and Equity to afford the Petitioner
much more, yet cannot prevail in a Suit so
reasonable.

Two days after which Order so given,
the Petitioner was also in the same Court
ordered to pay Money to another upon a
Motion, there being then no Bill in Court,
which is since Decreed, though not to be
warranted by the Ancient Justice or ordina-
ry

ry Courſe of Proceedings in Chancery. Now for that it may tend to the utter undoing of any man to be ſhut by Decrees before the cauſe be fully opened or underſtood, or to be bound by ſuch as are not duly granted :

The Petitioner doth therefore in all Humility appeal unto your Lordſhips, humbly deſiring that as well for Juſtice ſake and for the future good of others, as the Petitioners relief, your Lordſhips will be pleaſed to hear and judge the ſame.

Upon reading the Petition, and ſome debate, Ordered that the Lords Committees for Priviledges, &c. ſhall conſider of this Petition, whether it be a formal Appeal for for matter of Juſtice or no: And all the Judges are to attend the Lords therein.

10. Decemb. 1621. The Lord Archbiſhop of Canterbury (the firſt of the Committees for Priviledges, to whom was referred the Petition of Sir John Bourchier, Knight; to be conſidered, whether it were a formal Appeal or no) reported that divers Lords appointed to ſearch for Preſidents, cannot find that the word *Appeal* is uſual in any Petition for any Matter to be brought in hither, but they find that all Matters complained of here, were by Petition only; the Ancient accuſtom-

accustomed Form thereof being, *To the King and His Council*. And that they cannot find but only one President of this Nature, which was a Complaint by Petition against *Michael de la Poole* Lord Chancellor, for matter of Corruption.

The House thereupon the next day examined the business, as to the hasty hearing of the Cause, but did not meddle at all with the merits of the Cause, or order any thing therein.

26 May 1624. A Bill exhibited into the Lords House for reversing a Decree in the Court of Requests, between *Edwards* and *Edwards*, twice read and committed.

28 May 1624. A Bill by the Company of *Felt-makers* exhibited into the Lords House, for reversing a Decree in Chancery; made at the Suit of *Christopher Warwick*, twice read and committed.

28 May 1624. The Lords Committees for Petitions, report a Petition of *William Mathew* of *Landasose*, which was read, and the Answer thereunto conceived by the Lords Committees, was reported to the House, viz.

That upon Consideration of the whole Cause, they find *William Mathew's* principal Debt to be 5260*l.* which they hold fit to be paid at several days therein limited; and the whole Land to stand bound for it: and,
That

That the execution thereof should be recommended to the Court of Chancery.

George Mathew's Petition was read, being in these words, *viz.*

To the Right Honourable the Lords, &c.

The humble Petition of *George Mathew*, Esquire;

Humbly sheweth your Lordships,

THAT your Petitioners Decree now questioned, hath been several times submitted unto by *William Mathew*, never questioned during the Life of the Petitioners Father. And his Majesty upon Information by Petitions on both sides declared, That he saw no cause for questioning thereof.

And it was thereupon ordered, That to hear a Cause after a Submission (no Corruption appearing) would be a dangerous Precedent.

In Consideration whereof, and for that the Decree stands questioned only by Petition, nor was your now Petitioner ever Party to any Suit, nor is there any Bill depending in any Court, he being informed by Council,
That it hath been the Course of this Honourable
House

House to reverse Decrees but by Bill legally exhibited, especially where no Corruption is proved.

He most humbly beseebeth that he may not be censured, and a Decree submitted unto overthrown, and the small remainder of his Ancient Inheritance taken from him by Order of this Honourable House, only upon a Petition.

He most humbly submitteth himself herein to your Lordships, &c.

The Petition being read and considered of, some Lords were appointed by the House to set down an Order in this Cause.

May 29. 1624.

The Lords Committees reported the same to the House, *in hæc verba.*

The Lords of Parliament do order, That the Cause depending between *William Mathew* and *George Mathew*, shall be reviewed in Chancery by the Lord Keeper, assisted by such of the Lords of Parliament as shall be named by the House, and by any two of the Judges whom the Lord Keeper shall name. For which end, the Lord Keeper is to be an humble Suitor unto his Majesty, for a Commission unto himself and the Lords that shall be named by the House, for the

the said review and final determination of the Cause as to them shall appear just and equal.

Which Order being read, the House approved thereof, named several Lords to be joined in the Commission, and ordered the same to be heard and determined accordingly, the beginning of *Michaelmas* Term then next.

C H A P. XXII.

*Other Priviledges of the Lords, as a House,
and as single Barons.*

BESIDES these Priviledges before mentioned, there were divers others concerning them as a Body; as, their making Proxies, passing of Bills and Judgments without assent of the Lords Spiritual, their appointing Judges out of themselves, for Examination of Delays of Judgments in other Courts, and their Tenants of Ancient Tenancies being discharged of paying their Charges of Knights of the Shire.

As also, such as respected them as single Barons (which were also communicated to Baronnesses;) As, concerning

F.

1. Their

66 *Other Priviledges of the Lords, &c.*

1. Their Oaths and Protestations to be taken upon Honour.
2. Their Trial by Peers.
3. *Scandala Magnatum.*
4. Process against them in English Courts.
5. Their Number of Chaplains.
6. Their retaining of Strangers.
7. Clergy without reading.
8. Liberty of Hunting in the Kings Forests.
9. Amerciaments.
10. No Process in a Civil Action to be awarded against their Persons.
11. A Knight to be returned in every Pannel where a Baron is party.
12. No day of Grace against a Baron.
13. Power to make Deputies in places of Trust committed to them, without special Power.

Of which more may be said hereafter, it being not the present purpose to treat of them more largely.

There are likewise divers other matters concerning the Practice and Method of Proceedings in the said House, worthy of observation.

C H A P. XXIII.

Of Adjourning, Proroguing and Dissolving Parliaments.

ADjournments and Prorogations have been, either by the Kings Command being personally present, or by Commission under the great Seal (besides the ordinary Adjourning by the House it self, or by mutual consent of both Houses for some few days.

4 and 5 *Philip & Mary*, on the twentieth of *January*, it is entred, That after the Royal Assent to the Bills by the Queen being present, the Lord Chancellor prorogued the Parliament until the fifth of *November* next.

18 *Eliz.* The second Session, *March* 14. 1575. The Queen being present, commanded the Parliament to be prorogued until the fifth of *November* following.

The Entries in the Books are very numerous of this nature: *Dominus Custos ex Mandato Domine Regine: Or, Ex jussu Domini Regis, prorogavit presens Parliamentum usque, &c.*

The difference between Adjournments by the House and Adjournments by Commission, appears in a Report made to the

68 *Of Adjourning, Proroguing,*

House by Mr. Attorney-General, *June 1.* 1621. upon a Reference from the House for that purpose, who read divers Presidents out of several Journal-Books of the Form of Adjournment of Parliaments, and shewed the difference between the Adjournment and Prorogation; and how that the word *Prorogare* was often used for *Adjournare*, but the word *Adjournare* was never used for *Prorogation* of a Parliament: He shewed also that a Parliament being adjourned by the House, all Committees were of force, and the Bills remained *in statu quo prius*; but an Adjournment by Commission from the King, did determin all Committees, and they did cease till the next sitting of the Court, nevertheless the Bills were preserved *in statu quo prius*.

Prorogation, in the proper and strict sense, is, when after a Session ended by the Royal Assent unto Bills, the Parliament is continued over for another Session, as in the first Parliament of King *James*, there were five Sessions; the Parliament lasted about seven years, which as often as the King was present, was done by Command, as before, else by Commission.

December 6. 1620. The Lords being Assembled in their Robes, sent the Gentleman Usher to signify to the Commons, That the Lords expected their coming up, to whom
the

the Kings Pleasure was to be further signified. The Speaker and Commons being come into the House, and at the Bar the Lord Chancellor declared the King had granted a Commission to divers Lords to prorogue that Parliament for some time, and then delivered the Commission to the Clerk of the Parliament to be read publicly, (every one of the Lords Commissioners standing up in their places as their Names were read,) and thereupon the said Commissioners did prorogue the said Parliament until the *9th. of February* following.

When there was only an Adjournment by Commission, the Commons were not sent for, but the Writ being first read in the House of Lords, was afterward sent down to the Commons. So *Decemb. 19. 1621.* the Commission for the Adjournment being read, the Lords adjourned their House.

After which Adjournment, the Commission was delivered to Mr. Justice *Winch* and Mr. Justice *Jones*, who were sent therewith to the Commons, and commanded to signifie unto them, that the Parliament is adjourned by virtue thereof, by the Commissioners therein named, who returned answer by the said Messengers, that they would adjourn their House also.

The manner of dissolving a Parliament hath been either when the King was present in full Parliament with the Lords and Commons, by whose Command the Lord Chancellor, or Lord Keeper, did pronounce it in these words: *My Lords and Gentlemen, His Majesty doth dissolve this present Parliament.*

Or else it was done by Writ directed to certain Lords; which Writ being made known to the House, the Proceeding is set down in these words, in the Journal of the Parliament of 12 *Jacobi*.

June 7. 1614. The Lords being assembled in their Robes, after Prayers ended, the Commissioners taking notice of his Majesties Commission for dissolving the Parliament, left their proper Seats, went up and sate on a Bench or Form prepared for them, and placed overthwart the House, between the Chair of Estate and the Wool-sack, whereon the Lord Chancellor sitteth; and the Gentleman Usher being sent for, the Commons who being come with their Speaker, the Lord Chancellor declared, That his Majesty having ordained his Parliament to be holden, and begun the *5th. of April* last, had now thought fit to dissolve the same, and for that purpose had granted a Commission to certain Lords:
Which

Which Commission the Lord Chancellor delivered to the Clerk of the Parliament, who returning to his accustomed place, read it publickly, and thereupon the Commissioners did dissolve the Parliament.

F I N I S.

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2. May 1642.
have a certain edition of this
sort, in some dated in 1642.
the more full than here.

THE
PRIVILEGES
OF THE
BARONAGE of ENGLAND

When they sit in *North the*
Parliament:

With the Special Rights of *Barons* that
have Place in Parliament, in their
Private Capacities.

Collected out of Parliament Rolls, Crown
Rolls, the Proceedings of the Courts at
Westminster, the Arch-bishops Register,
the Delegates Year-books, the Com-
mon Law, Statutes, and other good
Authorities.

With the Articles of Impeachment against
Michael de la Pool, Lord Chancellor
of ENGLAND.

By JOHN SELDEN Esq;

Quo communius eo magis bonum quod est justum.

LONDON, Printed for Sam. Heyrick at Grays-Inn-Gate,
and Matth. Gellyflower in Westminster-Hall, and Sold
by Randal Taylor, near Stationers-Hall. 1689.

THE INTRODUCTION

By way of Table or Index to the
Chapters following in this
TREATISE.

PRiviledges are special Rights belonging to the *Baronage of England*. In which name are comprehended all those, who as *Magnati & Proceres Regni* by common right are summoned to every *Parliament*, wherein also they have Place and Voice, as incident to their Dignities, and what things do concern them either as they are one Estate together in the House of Lords, or as every one of them is privately a single *Baron*.

A 2

FOR

For Priviledges of the first kind.

CHAP. T *Estimonies are hereby collected, touching,*

1. *Their Proxies and making of Proxies.* 7
2. *Their Proceedings in Suits, as well for followers as for themselves, during the Parliament.* 12
3. *That none of them be subject to be questioned before the House of Commons only.* 14
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5. *Their passing of Bills, and giving of Judgments heretofore, without any assent of Spiritual Lords.* 132
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7. *Their Tenants of ancient Tenancies, being discharged of paying the Charges of Knights of the Shire.* 140

FOR

For Priviledges of the second kind,

Of which also some are Communicated to *Baronesses*.

The Heads of the Collections are,

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2. Tryal by Peers. 152

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7. *Clergy without reading*. ib.

8. *Their liberty of hunting in the Kings Forrests*. 169

9. *Amerciaments of them*. 170

10. *No Process in a civil Account to be awarded against the body of a Baron*. 172

11. *A Knight to be returned upon every Pannel where a Baron is party*. 175

12. No day of grace against a Baron of Parliament. ib.

13. Making Deputies of Places of Trust, committed to them without words of the special power. 176

BESIDES these, they have some Rights which are so commonly known, that there needs no particular mention of them; as their Interest in making, or repealing of *Laws*, or the like; and divers others may perhaps be found, which have not been obvious in the late search made for them: but of these particulars before mentioned, according to the order in which they are described, such store as are here collected do follow.

OF THE
SPECIAL RIGHTS

Which concern THEM, as they are
one Estate in the Lords House of
Parliament.

CHAP. I.

*Of Proxies of the Lords of
Parliament.*

UPON the Summons of the Parli-
ament, Licence of Absence being
obtained, and the same Licence as
usually, it being provided that a
Proxy be made, the *Baron* so licensed may
appear only by that *Proxy*, to whom his
voice is so committed, although his Writ
be *Quod personaliter interfuit*, and so also with-
out licence upon sickness, or such inevitable
cause of absence.

The first mention of *Proxies* that occurs
in the Memoires of our Parliaments, is of
Carlile, under *Edward the First*, where the

words are, *Quia omnes Prælati, Milites, & alii de communitate Regni, tunc plenarie non venerunt receptis quibusdam procurationibus Prælatorum, qui venire non poterant adjornantur omnes qui summoniti sunt ad Parliamentum, usque ad diem Mercurii proximum sequentem ad horam primam.* And in a Parliament held at *Westminster* under *Edward the Second*; the Bishops of *Durham*, and *Carlile* remaining upon the defence of the marches of *Scotland*, were severally commanded to stay there; and in the Writ this clause was ordered to both of them. *Sed procuratorem vestrum sufficienter instructum ad dictos diem, & locum mitatis ad consentiendum quod tunc ibidem per dictos prælatos, & proceres contigerit ordinari.* And the like Testimonies are afterwards under the same King for allowance, and making of Proxies, by the name of *procuratores sufficientes*. And in succeeding times the Testimonies of them down to this day are most frequent.

But two things are most especially observable touching them.

1. **T**hat although the general Proxies were admitted, yet when the nature of the Parliamentary business required more speedy and full advice, a clause was inserted into the summons to premonish the Baron summoned, that his Proxy should not be admitted

ted unless he were compelled to absent himself by most inevitable necessity. So was it in the Writs of Summons under *Edward* the Third, to the Parliament, held for advice touching the Voyage of the King of *France* into the *Holy Land*; every *Baron* having these words in his Writ. *Scientes pro certo quod nisi evidens, & manifestus id exposcat non intendimus procuratores seu excusatores pro vobis admittere, ea vice propter arduum negotiorum prædictorum.* And likewise under *Richard* the Second, the summons to the Arch-Bishop of *Canterbury*, and the rest had these words. *Et hoc nullatenus omitatis ne quid absit per vestram absentiam quam necessitate infirmitate tunc detenti fueritis quod aliquo modo illuc laborare non poteritis nullo modo excusatum habere volumus, ista vice expeditio ne potius nostrorum prædictorum retardetur, seu aliquo modo deferatur.* And divers other Examples are for personal appearance, and excluding *Proxies*.

2. That the course of the elder time was, not that *Barons* only were made *Proxies* in the Lords House at this day, but other men also of low condition, and this hath been very frequently in the case of Bishops, and Parliamentary Abbots and Priors, who gave their Letters usually to Parsons, Prebendaries, Canonists, and such like. In that Parliament of *Carlisle*, under *Edward* the First, the Bishop of *Exeter* sent to the Parliament,
Henry

Henry de Pynkney, Parson of *Houghton*, as his Proxy. The Bishop of *Bath* and *Wells* sent *William of Charleton*, a Canon of his Church, and in like sort other of the Spirituality of that time.

In the beginning of the seventeenth year of *Richard the Second*, the Bishop of *Normich* made *Richard Corqueaux*, being then Dean of the *Arches*, *Thomas Hederfet* Arch-deacon of *Sudbury*, and *John Thorpe* Parson of *Epingham*, his Proxies by the Name of *Procuratores seu nuntii*. And in the same time the Bishop of *Durham's* Proxies were *John* of *Burton*, Canon of *Bewdley*, and Master of the Rolls, and *John* of *Wendling-borough* Canon of *London*, and other like are of the same time. By which also that of the Preamble of the Statute of *Præmunire* is understood, where it is said, that the advice of the Lords Spiritual being present, and of the *procuratores* of them that were absent, was demanded. The like under *Henry* the fourth and *Henry* the fifth are found in the Rolls. And under *Henry* the fifth the Arch-Bishop of *York* gives the Proxy to the Bishop of *Durham*; and to two other Clerks of his Province. And it is observable, that in the making of Proxies by the whole number of Bishops in case of Attainders upon Appeal, their course was sometime to make a Gentleman, beneath the degree of a Baron, the Proxy, as under *Richard* the

the Second, first they made their *Proxy* for assenting in the Parliament, but afterwards the Earl of *Wiltshire* had that place in the same Parliament. But this of making others then *Barons* of Parliament, *Proxies*, is carefully found in the cases of the *Lords Spiritual*.

One special case of it is under *Henry* the fifth, in that of *Thomas de la Ware*, who being a Clergy-man, had his *Barony* descended unto him, and is stiled in the Summons always *Magister Thomas de la Ware*, and not *Dominus*, he gave his Letters to *John Frank* and *Richard Hulm* Clerks, but the proxy Rolls for the Temporal Lords, are for the most part lost. The following times, especially ever since the first memory extant in the Journals of the House of Lords; which began the first of *Henry* the Eighth, have kept a constant course of making Parliamentary *Barons* onely *Proxies*. And it appeareth in those Journals, that one or two or three are joyned *communem, &c. disjunctim*; and most commonly Temporal Lords have given their *Proxies* to Temporal and Spiritual men: yet not without a Temporal Lords giving his Letters of proxy to a Spiritual, and Temporal Lord together. And under Queen *Mary*, *Francis* Earl of *Shrewsbury* made *Anthony* Viscount *Mountague*, and *Thomas* Bishop of *Ely* his *Proxies*. And in the beginning of Queen *Mary*, *Stephen* Gardiner Bishop of *Win-*
chester

chester was joyned in Letters of Proxy sometimes with a Temporal Lord. But the Lords Spiritual have so much mistaken (of late) the Laws of this Kingdom, the Kings Prerogative given by the Law, and what and whence was the Original of the Honours, they themselves had obtained: and have been ready to enlarge the Dominions of Antichrist, and to induce an Arbitrary Government by their writings, and other apparent practises, in so much as now they have lost both Priviledge and Vote in Parliament.

CHAP. II.

Priviledges in Suits as well for their fellows as themselves during the Parliament.

see post 165.

IN a Bill exhibited under Henry the fourth, is shewed, that the Lords, Knights, &c. and their Men, and Servants, &c. should not be arrested or otherwise imprisoned by the custom of the Realm, and it is prayed that if any be, the parties offending may make fine and ransom, and give damages &c. Hereunto the answer is, there is sufficient remedy in the case. In the beginning of Queen Elizabeths Reign, John Broxham being Plaintiff in an Assize in the County of
Lincoln

Lincoln against the Lord *Willoughby*, it was ordained, that an Injunction should go out of the *Chancery Subpœna* 500. l. That the Plaintiff should not proceed to Tryal.

To this head may be referred that case of the Lord *Cromwel*, cited in the Title of *process* against them in English Courts, and in the Journals of *Queen Elizabeth*, *King James*, and our present Sovereign, the Testimonies of these priviledges for the servants of every *Baron* of Parliament are most frequent.

Hereunto may be added that of the first citation out of an Ecclesiastical Court against the Earl of *Cornwal*, which was served upon him at *Westminster-Hall*, as he was going to the Parliament, at the Suit of *Bago de Clare*, and the *Prior* of *Saint Trinity* in *London*, for the Earl sued them for the contempt, and recovered a 1000. Marks dammages. And in the same Parliament the Master of the Temple petitioneth, that he might distrain for Rent in a House in *London*, which it seems the Bishop of *St. Davids* held of him. *In qua non potest distringere in tempore Parliamenti*. But answer is, *non videtur honestum apud Rex concedat, quod ille de consilio suo distringatur per Ostia & fenestras & prout Moris est*.

Dyer.

Parl. 14

Eliz.

Dyer

Par. 39.

& 43.

Eliz &

1. lac.

&c.

Rot.

Parl. 18.

E. 1.

Rot. 2. inf. refren.

Dorfo.

C H A P. III.

No Peer of the House of Lords to be called to answer in the House of Commons only.

2 Martii
in Dyer
Parl. 15
Hen. 8.

T *Thomas Phillips* complained of the Bishop of London upon divers Articles in the House of Commons, and at first by Order of the House, whence it was referred by reason of the slight nature of the offence, &c. whereupon the Bishop remembring the House of Lords of their Priviledges, *Ejus verbis auditis proceres omnes una voce dicebant quod non consentaneum fuit aliquem procerum prædictorum alicui in eo loco responsurum.* So, where the Bishop of Bristol had written the Book of Union, which was conceived to be derogatory to the Honour of both Houses, yet he was complained of onely in the House of Lords; and that so he might be, and not before the Commons House alone, it was acknowledged in the message delivered from the Commons House touching him. The like is the priviledge of the Bishops complained of in the Parliament, 1641.

C H A P.

C H A P. IV.

*The Jurisdiction of the Lords of Parliament
in matters of offences, as well capital as
not capital, and in Errors out of the
Kings Bench.*

THE power of Judicature belonging to the Lords of Parliament, is chiefly seen in their Jurisdiction upon Writs of Error; and their Judgments of Offences, as well Capital as not Capital, which they give to any publick mischief in State.

Of these Judgments of such Offences many examples are of former times in the Records of Parliament, and out of them are here selected some such as most of all conduce to the opening of the course of Accusation, the form of the Defendants answering, the usual ways of Tryal, and other Incidents of their various kinds of Judgments, which are found Arbitrary in Cases not Capital: so that they extend not to the Life or Inheritance, and in Capital offences so Arbitrary, that the form of the death inflicted sometimes varied from the ordinary course used in the Common Law for such offences.

See 3 E.
3. fol. 9.
Scroope.

Under

Under the first Head, these Cases of

- | | | |
|----------------------------|---|------------------------------|
| 1. <i>John Matravers</i> | } | 5. <i>William of Ocle</i> |
| 2. <i>Borges of Bayons</i> | | 6. <i>John of Gomenix,</i> |
| 3. <i>John Deverill</i> | | and |
| 4. <i>Thomas Gourney</i> | | 7. <i>William of Weston.</i> |

All condemned to death for Treason, and all to be drawn and hanged, saving *Gomenix*, who was judged to be beheaded, because he was a *Banneret*, and had served the King in his Wars.

Under the second Head, are these Cases of

- | | | |
|--|---|---|
| 1. <i>John at Lee, Steward of the Household.</i> | } | 6. <i>Alice Pierce.</i> |
| 2. <i>Richard Lyons.</i> | | 7. <i>Cavendish against Sir Mich. de la Poole, Chancellor of England.</i> |
| 3. <i>William Lord Latimer.</i> | | |
| 4. <i>William Ellis.</i> | | 8. <i>The Earl of Northumberland.</i> |
| 5. <i>Chichester and Botesham.</i> | | |

For Writs of Error, their power, and course in them may be seen some special Examples which are expressed, whereunto is added that of *Thorpe*, being Speaker of the Commons House, under *Henry the sixth*, which specially shews the power of Judicature in the Lords, although otherwise it tast too much of what is wholly against the Priviledges of every member of the Parliament at this day.

Ex

Ex Rot. Parliament. 4 E. 3. mem. 3. num. 3.

Witness the Peers, Earls and *Barons* assembled in this Parliament at *Westminster*, that it is openly assented and agreed, that *John Matravers* is guilty of the death of *Edmund* Earl of *Kent*, the Uncle of our Lord the King that now is, as he that principally, Trayterously and falsly compassed the death of the said Earl, so that the said *John* did know of the death of King *Edward* our Father, when the said *John* by haynous manner, and by his false and wicked deeds conspiring with the Son of the said Earl against the Life of the King, which he did actually commit, for which the said Peers of the Land and Judges of the Parliament, adjudge and award that the said *John* be drawn, hanged and quartered as a Traytor, in what part of the Kingdom soever he be found, and the said Peers do pray our Lord the King, that he will command that a writ be made to make search and enquiry throughout the Realm, and that he that can take the said *John* alive, and bring him to the King, shall have a hundred Marks, and if in case he cannot be taken alive, he that brings his head, shall have fifty pounds of the King's gift.

B

More:

Rot. Parl.
4 E. 3.
m. 7.
Boges of
Bojons,
John De-
verel.

Moreover to have such judgment, it is agreed, that it be put in execution of *Boges de Boyons*, and *John Deverel* for the cause afore-mentioned, and that he that can take the said *Boges* alive, and bring him to the King, shall have a hundred pounds, and he which brings the head of the said *John*, shall have forty pounds of the King's gift.

Thomas
Gourney,
William
of Ocle.

Item, it is assented and agreed, that *Thomas Gourney* and *William of Ocle*, shall have such judgment for the death of King *Edward* (Father of our Lord the King that now is) who falsly and Trayterously murdered him, and who can apprehend the said *Thomas*, and take him alive, shall have a hundred pound, and he that can bring the head of him a hundred Marks; likewise he that can take the said *William* alive, shall have a hundred Marks, and he that brings the head of him (if in case he cannot be taken alive) shall have forty pound of the King's gift.

Rot. Parliamen. 4. R. 2. M. 5. in *Schedula annexa.*

THIS Schedule the Commons made and caused to be brought in Parliament, praying the Lords to ratifie the same, and to put

put in execution ; in that Schedule, amongst divers others, this Article occurs.

Item, that all those which have lost, or rendred when necessity required not, Castle, Town, or Fortress, to the dishonour of our Lord the King, the Lords and Commons in this present Parliament, being every of them attainted of such fault, shall be punished according to their desert without partiality, for to avoid the evil example which they have given to all others.

Then afterwards follows an Accusation and a Judgment upon an offence of that nature.

ITEM, where the Supplication is by the Commons, that all those which have rendred and lost Castle or Towns, lost by the very default of Captains, may be put to their answer at this Parliament, and according to their desert throughly punished by the award of the Lords and Baronage, avoiding the evil example which they have given to others, and that *Allen Buxal* (Constable of the Tower of London) shall cause to come before the Lords of Parliament at *Westminster*, on Friday the 27 day of November in the year afore-mentioned, *John Lord of Gomeniz*, and *William of Weston*, imprisoned and detain'd in the said Tower at the commandment of

John of Gomeniz: William of Weston.

our Lord the King, because they have rendered and lost faithful Castles and Towns of our Lord the King, for to answer upon the Articles which there shall be preferred for the said cause, on the behalf of our Lord the King. At which day, being Friday, the said *John* and *William* were brought by the said Constable of the Tower before the Lords aforesaid, sitting in full *Parliament* in the great Chamber; They were severally put to answer at the commandment of the said Lords, by *Sir Richard Scroop* Knt. (Steward of the Household of our Lord the King) in manner as followeth.

William of *Wesston*, you have taken upon you, to the thrice powerful Prince, whom God have in his keeping, Lord *Edward* late King of *England* (Unkle of our Lord the King that now is) surely to keep to him, and his Heirs Kings of *England*, the Castle of *Barrick*, without surrendring the same to any but him, or his said Heirs; have you *William* who were a ledge man of our Lord the King that now is (true Heir of the late King *Edward*) delivered and surrendered the said Castle to the Enemies of our Lord the King, without his Commandment, in dishonour of him, and his *Crown*, and of the Estate of his *Realm* of *England*, against your leigeance and undertakings: whereupon he put his answer in writing, having a Schedule

containing the Tenor of many things, and came and read the said Schedule in full Parliament, upon which the Law was demanded by the said Steward, if the said Schedule should be taken for his final answer in that behalf or not. And thereupon the said *William* prayeth that the said Schedule may be delivered to him, and there he putterh in his final answer, and after the said *William* put into the said Schedule an Addition in full Parliament for final in that behalf: The Tenor of which Schedule is such as followeth.

To the most sage Councel of our Lord the King, and to the other Nobles and Commons of Parliament.

W *Illiam* of *Wesson* beseecheth, and shews that he is accused maliciously, to have rendered the Castle of *Barnick*, which he had in keeping upon the Trust and assignment of our Lord the King: may it please your just and learned discretion, to have the said *William* excused for the causes which follow. First, may it please you to remember how that the said *William* was lately warned by a Spy, that a very great power of Enemies came against him, for to besiege the said Castle, and to batter the same with great Ordinance, whereupon the said *William* forthwith by his At-

The same Petition is in the Roll of Petitions, of the first of R. 2. 1. & ultimo.

ourney, and by his Letters, requested the Council, that they would please to fortifie the said Castle with more Gentlemen, for the defence and safeguard thereof, having regard that the Garrison of the said Castle was not sufficient for half the multitude of so great force, to make resistance in so large a place; but in the end, for that he could have no succour of the said Council, and likewise (the said *William* being not in default was left without sufficient Soldiers of a long time, whereby to keep and defend the said Castle, whereof he beseecheth you that you will take just and benign consideration.

Likewise, may it please you to take notice by the privy Scout of War, that there came the Enemies power of *Armes*, and seven hundred fighting Men, with 6000 of the common Souldiers of the Land, having nine great Cannons, a great *Engine*, and a *Trebuchet* big above measure, which they carried in their marches, that thereby presently a great part of their Gentlemen of *Arms*, and Souldiers aforesaid came before the Gates of the said Castle, to assault it, and there was a Knight of theirs killed, which was cozen to the Lord of *Chiffin*, insomuch that officers and many others also were there slain; and in a short time after they began to plant their Cannons, and *Engines*, and so continuing from day to day their assault, (that is say)

Tuesday,

Tuesday, Wednesday, and Thursday, and the walls then of the houses and of the said Castle were broken, and divided in many places, and they had by force filled the ditches of the said Castle in three places, if possible to make way for them to issue, and there came upon the said works a great part of them, and they by force had broke and spoyle many of our bars, and the morrow after which was Friday, they came at the break of day with all their strong Men to assail the said Castle, but by the help of God they were not yet *Conquerours* by force of their Assault. And of our side and of their side there appeared great death and losses, and the same day the Marshal of *Burgoyne* treated with the said *William* and others, to render the said Castle: Wherefore, and in consideration, that the said Castle could not hold out for the smallness of the number of Gentlemen there, and for that the walls in many places were beaten down by their marvellous Ordnance, there was a *Treaty* with the Lords, to the end that the said *William* with his companions, might know what to do the next morning, whether to stay or depart from thence. Likewise the same night the Enemies had brought all their Ordnance, their *Engines*, *Trebuchet* and *Cannons*, upon carriages drawn by Horses to the foot of the ditch of the said Castle, and the next morning, which was Saturday,

they put themselves all in *Order* to assault the place, and then first of all they sent a *Herald* to the said *William*, to know if the same Castle should be rendred or not; whereupon the said *William*, by advice of the graver sort of his companions, having consideration how the said place was destroyed by their Ordinances, and also that there were few Gentlemen left for the defence, and that twelve of their companions were at that time dead, and that many being wounded and sick, he could not renew the Gentlemen of the *Garrison*, and that for safety to defend themselves, there being only but thirty eight, and by common assent the said Castle which he could hold out no longer, was by force rendered for safety of the lives of the Men. That all these things aforesaid are true, the said *William* putteth himself upon Tryal according to your discreet Ordinances.

Item, it is to be remembred, that when the said Castle was rendered (as aforesaid) certain Gentlemen of *France* did bargain with the said *William* for his victuals, and bought the same, together with certain persons which the said *William* held within the said Castle in Prison, for which he received of them 1000 and 500 *Franks*, whereof he paid to his companions for part of their wages which then was behind, three quarters of a year, 678 *Franks*.

Item,

Item, he payed at *Callis* for victuals of the said Castle before that time due 1442 Franks.

Item, for the passage of the said *William*, and for his expences being at *Callis* 135 Franks. And therefore the said *William* beseecheth that you have regard to Justice and bounty, how that he by envious suggestion hath been against all reason accused thereof concerning his estate and name, for which offence he hath seised and slayed some of the Cattels of his Adversaries, and that you have consideration how that he hath pay'd his companions out of his proper goods for their wages, and that you will be pleased for Gods sake and piety also to ordain for him, that by your discreet nobleness, he may recover his Estate and goods.

Item, the said *William Weston* sheweth how the first day, when the Enemies came before *Ardee* he fled thence to the Army at *Callis*, to the Captain there, to pray of him more succour and aid of men to guard the Castle of *Barrick*, and to defend if the Enemies had assaulted, and the Captain answered him briefly, that he would not deliver nor lend succour, nor aid at that time, for that he doubted himself the Enemies would come before the Town of *Callis*. And the Lord Steward came and read the said Schedule in Parliament. *John* Lord of *Gomeniz*, you have undertaken to the thrice powerful Prince, whom

whom God preserve, Lord *Edward* late King of *England*, Uncle of our Lord the King that now is, safely to keep to him and his Heirs Kings of *England*, the Town and Castle of *Ardee*, without surrendring the same to any, but to the said King and his Heirs, or by the Commandment of him and his Heirs. Have you (Lord of *Gomenix*) in the time of our Lord the King surrendred the same without his commandment, to the detriment of him and his Crown, and of the Estate of his Realm of *England* against your undertaking aforesaid? what say you to it? whereupon the said *John* answereth, that the said Town and Castle of *Ardee* was so feeble, that he could not well keep it against so great power of the Enemies, which were ready to assail the said Town and Castle, and therefore he went forth to intreat with the Enemies, that he might save the liege men of our Lord the King being within that Town and Castle of *Ardee*, without that he at any time took any thing for the surrender of the said Town and Castle of *Ardee*. Whereupon one *Geffery* of *Argentine* Knt. said in full Parliament to the said *John*, that he the said *Geffery* was at that time in the said Town and Company with the said *John*, and that the Town and Castle of *Ardee* were not at any time delivered by his assent, but that he was ready to stay and come upon the safe guard thereof,

of, and this the said *Geffery* affirmed. And moreover it was demanded of the said *John* if he had any other thing to say, and he answered no: whereupon the Constable was charged with the safe keeping of the said *John* and *William*, until the morning of the next day; and then to bring them again safely before the said Lords in the said Parliament at the place and day aforesaid. At which day (that is to say) the eight and twentieth day of *November*, in the year aforesaid, were the said *John* and *William* brought again in full Parliament, and there it was shewed severally by the said Steward at the same day, by Commandment of the Lords aforesaid, how upon the Answers which the said *John* and *William* have given in the said Parliament, (as before mentioned) to the Lords of the said Parliament, *viz.* the King of *Castile* and of *Leon*, and the Duke of *Lancaster*; *Edmond* Earl of *March*, *Richard* Earl of *Arundel*: *Thomas* Earl of *Warrick*, *Hugh* Earl of *Stafford*, *William* Earl of *Suffolk*, *William* Earl of *Salisbury*, *Henry* Earl of *Northumberland*, *John* Lord *Nozil*, *Roger* Lord *Clifford*, and many other Lords, Barons, and Barons being assembled in the said Parliament, to advise at the time when the said Answers were given in Parliament, the Friday Even at the hower of three a clock, of the matters touching the answers aforesaid, and view-
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ing and examining diligently the said Answers, and other Articles concerning that business. And upon good and mature deliberation and Information, given of the most valiant and discreet Knights, and others being in the said Parliament, it was said in manner as followeth, to the said *William* by the Steward, reciting the things aforesaid, touching the said *William*. It seemed to the Lords aforesaid, that you *William*, without duress or default of victuals, have wickedly delivered, and surrendered to the Enemies of our Lord the King for your own lucre, contrary to all plea of right or reason, and against your liegeance and undertaking according to an Information in such case: which mentioneth, whereas the late Baron of *Graystock*, who was a Lord and one of the Peers of the Realm, had taken upon him safely to keep to the aforesaid King, the Town of *Barrick*: presently after the said King prepared himself to travel to the Kingdom of *France*; the said Baron, without the King's Commandment, left the said Town of *Barrick*, and a valiant Esquire, *Robert Ogle*, as Lieutenant of the said Baron, who safely should keep the said Town of *Barrick* to the King. And the said Baron went as an Horseman to the Parts of *France* to the said King, and there stayed in his company, furnishing that an Assault of War was made

made at the said Town of *Barnick* by the *Scots*. And the said *Robert*, as Lieutenant of the said Baron, defended forcibly there, and at last by their Assaults the said Town was taken, and the said *Robert*, and two of the Sons of the said *Robert* were slain, he being in the company of the King, in the Parts of *France*: And it was said that it was adjudged by the advise of the said King in the Parts of *France*; and the said Dukes, Nobles, and Earls, together with *Henry* Duke of *Lincaſter*, the Earls of *Northumberland*, and *Stafford*, and *Sir Walter Maſey*, that the said Town was loſt in default of the ſaid Baron. And for that cauſe he had Judgment of Life and Member, and that he ought to forfeit all that he had, and Judgment was rendred in theſe words by the Commandment of the King; Which things alſo conſidered, for that you *William* have ſurrendred the Caſtle of *Barnick* to the Enemies of our Lord the King aforeſaid, without drefſ or default of Victual, againſt your allegiance, and undertaking aforeſaid, the Lords afore-named ſitting in full Parliament adjudge you to death, and that you be drawn and hanged, but for that our Lord the King is not yet informed of the manner of this Judgment, the Execution thereof ſhall be put in writing untill the King be informed: wherefore it is com-

commanded to the said Constable safely to keep the said *William*, untill he hath other Commandment from our Lord the King. And as touching the said *John* Lord of *Gomeniz*, touching the Answers afore-said; It was shewed there by the said Steward, how the said Lords were assembled, and advised of the said Answers as before-said. Moreover it was shewed, how that at the time that Sir *Ralph Ferrars* Knight had the keeping of the Town and Castle of *Ardee*, the said Town was not so strong by the one half, as it was at the time when the said *John* surrendred the same, and the said *Ralph* did put himself in peril for the safeguard thereof, and forthwith the said *Ralph* did hold, and forcibly defend the same against a very great and forcible assault; and other evidences concerning the said *John* in this behalf were delivered, (as followeth) to the said *John* being in Parliament, by the said Steward, reciting all the matters afore-said touching the forementioned Judgment of the said Baron and the cause thereof, in manner as before it seemeth to the Lords before named sitting in full Parliament, considering your answers in this behalf, and your Examinations, and Informations therein, that lately amongst the number of Gentlemen, by whom you have strongly undertaken safely to keep the said Town and Castle

fle with twenty men of Arms, and twenty Archers, you were sent to the said Town and Castle of *Ardee* in the Afforcement thereof, according to your request thereof made to certain Lords, being sent in message to *Callis* under our late King *Edward*, and at such time also as you were advised by the King of *Castile*, that if you could not well keep it, you ought in no sort to take upon you to keep the same, and there were that would have undertaken the safe keeping thereof to the said King *Edward* and his Heirs, and you have undertaken safely to guard the same with no surrender to any, but in manner as aforesaid, and now have you *John*, without dures or default of Victuals or of Artillery, or of other things necessary for the defence of the said Towns and Castles of *Ardee*, without Commandment of our Lord the King, wickedly delivered and surrendered it to the Enemies of our Lord the King, by your own default against all plea of right or reason; and against your undertaking aforesaid, The Lords aforesaid in full Parliament adjudge you to death; and for that you were a Gentlemen and Banneret, and have served the late King *Edward* in his Wars, and have not proved a leige man to our Lord the King, you shall be beheaded without having other Justice. And for that also our Lord the King is not yet

yet informed of the manner of this Judgment, the execution thereof shall be respited until our Lord the King shall be informed thereof, where it is commanded to the aforesaid Constable safely to keep the said *John*, until he hath other commandment from our Lord the King. And it is to be remembred that *Geffery Martyn*, Clerk of the Crown, was named in this Record, and delivered the same there in writing in this present Roll, by his own proper hand.

*Ex. Rot. Parliament. 42 E. 3. M. 2. N. 22.
23. &c.*

William Latimer of the County of Dorset preferred a Petition in this *Parliament*, in manner as followeth. To our Lord the King and his Council sheweth *William Latimer* of the County of Dorset, that whereas our Lord the King otherwhiles in the pestilence granted to the Bishop of *Salisbury* the Wardship of the Mannor of *Dentish*, and *Devillish*, in the said County, being in his hands, by the minority of *Robert son* and heir of *Robert Latimer Knt.* together with the marriage of the said *Robert the Son*, being then of the Age of six years for a certain sum of Money to him payed: which Estate the said *William Latimer* hath held, until Master *John Lee* then Steward, by procure-
ment.

ment of *Thomas Delaber*, sene one *Richard Inworth* Serjeant at Arms in Dorset, to the said

John Lee Steward of the household.

William Latimer, to bring him to London in safeguard as prisoner with the intent aforesaid; that is to say, the Monday next before the Feast of the Nativity of Saint *John the Baptist*, in the year of our Lord the King that now is the nine and thirtieth; and the said Serjeant also performed the same, and the said Mr. *John Lee* did charge, and command the said *William* in the King's name, that he should not go out of Town upon pain of a hundred Marks, until he had surrendered the body of the said Heir, contrary to the patent of the King, to the said Mr. *John Lee*, and outed the said *William* of his Charter, and moreover made a deed of Release, whereupon the said Mr. *John Lee* commanded to hold all the Lands, and Tenements aforesaid, until the Feast of St. *Michael* then next ensuing, for a certain sum of Money, and then the said Mr. *John Lee* leased to the said *William*, the Wardship of the said Mannor of *Devillish*, rendring forty pounds per annum, whereof he was seised as prochein any of the Infant, viz. *Pulchraim*, *Helto*, *Whitechurch*, *Oxford*, and *Staket*, and let the same to the said *William*, and to divers other persons at his will, by such duress, imprisonment and arresting the said *William*,

to the great mischeif, grievous dammages and losses, to the great wrong of his simple Estate, whereof he prayeth remedy. To the points of which Petition the said *John Lee* answereth, and saith, that because that the Mannors, Lands, and Tenements of Inheritance there comprised in the said Petition, were wickedly extended by the Escheator, and leased out of the King's hand attwo small a value, to the great dammage and deceit of the King, he caused the same Mannors, Lands and Tenements to be resumed into the Kings hands; the Wardship of which Mannors, and the Marriage of which said Heir the King had committed to him.

And likewise the said *John Lee* was put to answer before the Lords, of the Affairs in such time as he was Steward of the Kings Hbushold, for that he had attached divers Gentlemen by their Bodies, some by Serjeants of Arms, and some by other ways, as *William Laimet* and others, and caused them to come before himself, as before the Council of the King, in places where pleased him, out of any of the Kings accustomed places, to answer to divers things, whereas the recognizances ought to appertain to the Courts of the King.

Item, It was debated concerning the Authority of Stewardship, that he within the Verge had attached divers Gentlemen of the

the Verge, as *John Goddard*, and others, to answer in the Marthalsea of things done out of the Verge, and caused some Men to be apprehended, and sent to the Tower of *London*, of his own Authority, without Commandment of the King or his Council.

It was likewise debated, that *Hugh Lavenham* had appealed certain Gentlemen of Felony, and that before the Kings Justices at *Newgate*, and divers Gentlemen arraigned at his suit, whereof some put themselves upon the Country, and some defended themselves by their bodies, and stayed in prison as the Law demanded, and that an *Appealee* of murder was let go at large, by Commandment of the said *John Lee*, against the Law, and Command of the Justices, and that he took the said *Hugh* by his own Authority and let him go at large, and some that were not *Appealees* in roll of the Crown, at the suggestion of the said *Hugh* were taken and imprisoned, as if they had been *Appealees*.

It was also affirmed, that whereas the said *John Lee* was sworn to the King, and his Council; he did bargain with Master *Nicholas Lovain*, concerning the Wardship of the Mannor of *Reinham* in *Kent*, being then in the hand of the said *Nicholas*, by the under age of the Son and heir of *John Stanton*, as appeared by certain evidences,

as well by Letters Patents under the King's Great Seal, as others which the said *John* had in his keeping, that very plainly, the said Mannor was holden of our Lord the King in chief, as of his Castle of *Dover* and Fort, that the Wardship thereof appertained to the King, to the great dammage and deceit of the King against his Oath. Of which points and articles, he cannot duly and sufficiently excuse himself by the *Law*, and therefore was the said *John* commanded to the Tower of *London*, and there to stay as a Prisoner, till he had made fine and ransom to the King according to his will. And it was commanded to Master *Allen Buxal*, Constable of the Tower, that he take safe keeping of him, and so departed the Prelates, Dukes, Earls, and Barons, and afterwards by the commandment of the King, the said *John* was caused to come guarded from the Tower to *Westminster*, before the Great Council, and at other times examined upon the points of the Petition; the said *William Latimer* answered and said: That our Lord the King had committed the Wardship of the Mannors, Lands and Tenements of the said heir, until the age of the said heir, together with the marriage of the said heir; and as intirely he would render it into the King's hands: And then before the said Council it was agreed

agreed and assented by them: That the said Mannors, Lands and Tenements, and the Body of the heir aforesaid ought to be released in the Kings hand, and delivered to the said *William Latimer*, to hold as he held of the said Bishop, until the full Age of the said Heir, doing to the King in manner as it was before the said *John* surrendred the same; and that the Letters Patents of the King made to the said Bishop, of the same Ward and Marriage made to the said *William*, and surrendred to the said *John* by the said *William* by durity and menaces, be fully restored to the said *William*, and that the Enrolment of the release to the said *John* by the said *William* of the same Ward and Marriage, also by durity and threatning made as by the said *William* in the Exchequer, be cancelled, void, and holden for nought for ever, saving all times to the King his right in time to come,

Ex. Rot. Parl. 50 E. 3. mem. 2. num. 17.

First, the said *Richard Lions* Merchant of *London*, was impeached and accused by the said Commons, of many deceits, extortions, and other evil deeds committed, by him, against our Lord the King, and his People, as well in the time that he had been belonging to the House and Council of the

King as otherwise, during the time that he was Farmer of the Subsidies and Customs of the King. And more especially, for that the said *Richard* by *Covin* had between him, and some of the Privy Council of our Lord the King, for their singular profit, and advantage, had procured and gotten many Patents, and Writs of Licence to be made to carry great Faith and Credit. Whereby Skins, Wools, and other Merchandises were transported otherwhere than to the Staple of *Calles*, against the Ordinances and Defences made in that behalf, concerning the same before-time in Parliament. And for that he had imposed and procured to be put upon Wools, Skins, Leather and other Merchandises, certain new Impositions without assent of Parliament, and those Impositions and Taxes without permission of the King, or of the High Treasurer of the *Realm*, having not medlage therewith; and it was said how he uncertainly took ten shillings in one parcel, and twelve pence in another parcel of every Sack, &c. which mounted to a very great Sum throughout all the time that he had been Receiver, or Treasurer: and likewise of another new Imposition of four pence by him made, and put upon every pound of Money upon the *Lumbards*, and other Merchants, for a discharge by his own proper Authority, and without warrant and assent

assent in *Parliament*, or otherwise, and the same Imposition of four pence the pound, contrary to Piety, collected and kept as to the use of our Lord the King, whereof he payed nothing. And also of divers Loans made to the use of the King without cause necessary; and more especially of one Loan which he newly had at *London*, of twenty thousand Marks, where our Lord the King was bound to pay 30000 Marks, and that by the Counsel of the said *Richard*, and others in the Kings Court, who have covenanted with the Receivers to have part of the gain, and to be parties secretly to the said Loan: the said *Richard* taketh the said Money, and afterwards gaineth by way of Usury of the King his Lord, (of whose Council he was before) a great quantity of Money, in great damage and deceit to the King, and also many other Extortions throughout the *Realme*, and so demeaned himself against his Council, Treasurer and Receiver, concerning the new Impositions as otherwise, taking upon him in all the said matters the Royal Power which was horrible to rehearse. And also for that our Lord the King had been debtor of Record to divers Gentlemen, of many great sums of Money: so had the said *Richard* by the assent of other privy Complices in the Kings Court, of the said *Covyn*, caused many such accounts to be bargained,

and compounded, sometimes for the tenth penny, and sometimes for the twentieth, or a hundreth penny, and hath procured the King to pay the debts intire; and so by such his subtleties, and for his singular profits, as well our Lord the King as the said debts, are wickedly abused: and more especially the Prior of *St. John of Jerusalem in England*, to whom the King was debtor of a certain Sum, and the said *Richard* hath had twenty four Marks thereof for Broakage, to cause the said Prior to have payment of the remnant: and another time of the Lord *Steward*, to whom the King was also a debtor, and the said *Richard* hath had of him by the same manner another great Sum of Money, and so of many others, in great deceit, slander, and villany to the King and his Court. Whereunto the said *Richard*, present in Parliament, saith, that as to all the said Loan made to the King of the twenty Marks aforesaid, he is altogether without other fault, and further saith, that he at no time had profit or gain, or took any thing at all of the Loan aforesaid, nor of the said Money, nor in other things, and that he was ready to prove by all ways reasonable when they would demand of him: and as to the said Imposition of ten Shillings, and twelve pence the Sack of Wool, &c. and four pence the pound of Money, he could not clearly

excuse himself that he had not so levied and collected, and thereof taken money his part, that is to say, twelve pence of every Sack of Wool, &c. but that was (he said) at the commandment of our Lord the King, and at the prayer and assent of the Merchants, who demanded such Licence; and as to the remnants of these Impositions he had wholly delivered them to the Receiver of the Kings Chamber, and accountable is the Receiver in the Parliament. And the said *Richard* first of all collected the same, having a Warrant, by which Authority he hath before shewed in Parliament, under the Seal of the King himself and his Council to do, and thereupon were Witnesses produced in Parliament, that our Lord the King had expressed a day for the same. And some Lords there present in Parliament were, that knew not how or in what manner he was become in such office under the King, (and what is more) that the King knew him not for his Officer, and that amongst other Articles, the said *Richard* made no answer, wherefore the said *Richard* was awarded to Prison during the Kings pleasure, and distrained to fine and ransom according to the quantity of his Treispass; and that he lose his Freedom of the City of *London*, and be no more in Office under the King, nor approach to the Kings Court or Council; and thereupon
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another time the said *Richard* was sent for before the Lords of Parliament, where it was said to him, that it seemed to the Lords that his Offences were so great and horrible, that he had not sufficient wherewith to make satisfaction, and forthwith the said *Richard* submitted himself into the favour of the King, his Body, his Lands, Tenements, Goods and Chattels, and willed and granted that his Body, Goods, and Chattels should be at the Kings will to give; and as to the Extorsions done by the said *Richard*, or his Deputies, from the time that he was Farmer of the Subsidies, or Customs as before said, it is ordained in Parliament that good Inquiry be made by sufficient Gentlemen in all the Ports of *England*.

Ibidem N. 21.

The Lord
Latimer. **I**tem, *William* Lord *Latimer* was impeached and accused by the Vote of the said Earls, of Deceits, Extorsions, Grievances, and other Mischiefs by him, and others of his Faction and Covin, during the time he stayed, as well under our Lord the King in *Britain*, when he was in Office with the King, as otherwise in *England* the time that he was Chamberlain, and of the Privy Council of the same our Lord the King. First of all, concerning that when
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the said Lord *Latimer* had been Captain of *Becherel*, and Officer of the late King *Edward* in *Brittain*, if before or during the Peace or Truce it was committed. And thereupon it was proclaimed and published under the King through *Brittain*, That no *English* man, nor other Foreigner, shall take Wines, Victuals, nor other things of any Persons, Towns, Castles, nor of others, except they pay presently for them; nor shall they take or ransom any Person, Town, Fortref, or other place, upon pain of what they may forfeit; notwithstanding all which the said Lord *Latimer*, and his Lieutenants and Officers caused to be taken by wrong and violence, of divers Gentlemen of the Country, much Wines and Victuals to a great value, without paying any thing, and likewise ransomed many by Oaths; and in taking and receiving Ransoms unto the Sum of four Millions, and three thousand pounds: whereof our Lord the King enjoyed nothing, to the great damage and villany of the King, and Oppression of his People and the said parts, and against the Proclamation and defence aforesaid, as in a Letter made and sealed with the Seals of many Lords of *Brittain*, called *Ragman*, and sent into *England* to our Lord the King aforesaid, more at large appeared; but the said *Ragman* could not be found in any sort, nor
any

any man knew how to say in truth, what became of it; and yet he at another time was accused thereof, that he had taken at *Becherel* and *Plimoyson*, from thence unduly 153 l. w. of Gold, whereof the King had never any part, nor any Restitution made thereof, and the parties from whom those Sums were taken, preferred a Bill in Parliament in form as followeth,

It is to be remembred, that the proofs of parties that were ransomed at *Becherel* and *Plimoyson* during the time of Truce, have paid so much to Master *John*, Port-Constable of *Becherel*, for the Lord *Latimer*, and to *William* his Son, and to *Hugh Middleton*, Receiver of the said Town, or to the Lord *Latimer* departed out of *Brittain*.

The yearly Sum 40 Franks.

And likewise the said Constables, *William* and *Hugh*, have received of the Ransoms of such as were wont to be ransomed during the War, more Moneys than would have well paid all the Souldiers of the said Town,

The Sum 50 Franks.

And likewise the said Country of *Brittain* have paid to the said Constables, *William* and *Hugh*, for the death of divers Gentlemen,

men, liege-men of our Lord the King, that were killed upon the Land of *Brittain*.

The Sum 30 Franks.

And likewise the said Constable, and *William* his Son, gathered upon the Country of *Brittain*, to send Monsieur *Gakes* from *Plimouth* dates to *England*.

The Sum 12 Franks.

And likewise the said *William*, for that he lost twenty Marks in the Isle of *Garnesey*, in a Ship, put a fine and ransom upon the said *Becherel*.

The Sum 1000 Franks.

And likewise *Robert Ravenston's* Boy had stollen a half Salt-seller of Silver, and therefore the Land of *Brittaine* was ransomed.

The Sum 2 Franks.

And likewise the said Constables *William* and *Hugh*, Receivers of the said Town, had received divers times for Victuals sold, as Salt, Wine, Beef, and other commodities, to the Sum of a thousand Franks, to the great loss of your poor liege-men, and to the Town of *Becherell*. For by these extortions which they had borne and sustained, by the horrible necessity of the poor people, and likewise of the Gentlemen, was the said
Town

Town lost. Wherefore they beseech our Lord the King and his Council, to cause the said Constables, *William* and *Hugh*, to come and answer the aforesaid Receipts, so that our Lord the King may be served of that which belongeth to him; and that your poor liege-men that were in the defence of the said Town, may be paid their Wages for the time that they were in the said Town, if so it be your pleasure.

And likewise the said Lord *Latimer* was impeached by the Commons of divers Loans, made to the use of the King without cause necessary, to the great loss and grievous damage of the King, and more especially of a Loan that was made of late to the use of the King, by the Counsel of the Lord *Latimer*, *Richard Lions*, and others of his Covin, of twenty thousand marks, where our Lord the King was obliged to his Creditors in the said Case to pay again thirty thousand marks, and that was done by Covin of the said Lord *Latimer*, and others that were privy with the said Creditors, to have part of the said Gain, and to be parties to the said deed, or without answering the said Loans; for it was furnished in special, that the said money was the Kings own, taken out of his Chamber or Treasury, and also the proper mony of the said Lord *Latimer* and *Richard Lions*, who appeared as if oppressed

oppressed by the said loan, and also for that by like covin between him and the said *Rich. Lions*, for their singular profit and gain, he had procured and counselled our Lord the King to grant many Licences by Patents and Writs, to cause a great quantity Wools, Skins, and Leather, and other things, to be carried to parts beyond the Sea, other then to *Callis*, against the Ordinances and defences made before time in that behalf, to the destruction of the staple of *Callis* and of the moneyage there, to the great damage of the King, and of the Realm of *England*, and hurt of the Town of *Callis*: and and likewise that by such covin done between him and the said *Richard Lions*, for their singular profit, he had caused to be put upon the Wools, Skins, Leather, and other Merchandises of the Staple, divers new Impositions. That is to say, of every Sack of Wool passing otherwhere than to *Callis*, by such Licence 11 s. more, against the Statutes and Ordinances thereof made, and also for that by his singular profit and ill government between our Lord the King and his Realm, they have had and suffered many other grievances, losses, damages, and villanies without number, as the loss of the Town of *St. Sabiour* in *Normandy*, and of the said place of *Becherel*, and of other Fortresses, which might have been well saved
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and kept, if the King had been well counselled.

And also concerning certain Spies and other Felons taken and imprisoned by the King, and after delivered by the Lord *Latimer*, of his own proper Authority, without the knowledge or pleasure of the King, taking upon him, and inroaching notoriously in doing these things upon the Royal power.

Whereunto the said Lord *Latimer* then present in Parliament said: That saving to him what ought to be saved to him, as to one of the Peers of the Realm, as well in giving of Judgment as otherways in time to come, if please our Lord the King, and the Lords assembled, he might be put to answer to him which in especial would accuse him of any of the matters aforesaid; and afterwards, for that no especial person would openly accuse the said Lord of the same things in Parliament, whereof the Commons would maintain the said Accusations against the said Lord *Latimer*, in accusation of his person and Declaration of his Fame, he said, That true it was, that he was Captain of *Becherel*, and that such a Peace was made in *Brittain* under the King, and that an inquiry was made and put in writing, and sealed with many Seals of the Lords of *Brittain*, and sent to our Lord the King in *England*, which Enquest

is there called *Ragman*, but he saith that this Request was made by the *Brittons* and *French*, which would not have our Lord the King, nor any *Englishman* for their Governour; and falsly to have destroyed the said Lord: and he saith now (as other times he hath said) to our Lord the King when he was in like manner impeached thereof before the King himself, that all the profits, which he at any time received by himself, or otherwise in *Brittain*, passed not in all things the Sum of 10000 *l.* accounted in the same Sum of 10000 *l.* all the profits which he received for Ransom of the Viscount of *Roan*, and of other Prisoners which he took at the battel of *Grey*; and that he is ready to prove by all reasonable ways that one of his Estate and Degree ought to do; and he saith, that it seemeth by the Laws of Nations, that the said *Ragman* is not to be allowed, and that it was done by the Enemies of the King and Realm, (as aforeſaid) and likewise made out of the Realm, and that therefore all men ought not to hold him of the less Credit or Reputation. And soon after the Commons having this answer of Submission, prayed the Lords of Parliament in behalf of the King, that the 10000 *l.* Execution be had forthwith against the said Lord *Latimer*, as of a thing past by the said Submission thereof, as he hath acknowledged at another

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time, when he was impeached thereof, and that the said Submission be made by him, as it ought to be, nor that any remonſtrance or agreement be made to the King, nor pardon, nor other thing gotten, by which he may be diſcharged. And the Lords answered, that the ſaid Answer ſhould be reported to our Lord the King, and thereupon right ſhall be done for the King; and as to the ſaid Bill preferred afore in Parliament concerning ſuch men as he made his Deputies or Lieutenants at *Becherel* and *Plimoyſon*, the ſaid Lord *Latimer* ſaith, that he is altogether innocent and without blame, even at the time that the ſaid *Ragman* was ſo made and ſent to our Lord the King. And the Lords answered thereunto, that they would take advice of the Kings Council, and thereupon right ſhould be done on every part. As to the Loans made to the uſe of our Lord the King without neceſſary cauſe, he answereth and ſaith, that he knew of none without cauſe very neceſſary and greatly behooveful. And to that, that the intent is ſubmitted to be falſe Covin, or other diſloyalty for profit, or to have part; he ſaith, that he is altogether innocent, and not guilty: and that he never delivered nor took any Money, or other thing of the King, nor of any other, to make the ſaid pretended Loan; and that he was ready to prove by all ways that a
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man ought to do. And as to the Patents and Writs made and granted for the passing of Wools, Skins, Leather, &c. otherwhere than to the Staple of *Calles*; he saith, That those Licenses were commenced before his time, with the King as well at *Genoa* and *Venice*, as otherwhere; and further saith, that if nothing thereof had been done till his time, the same had not been done, nor was pursued by his Counsel only, but by him with others; and that there accrewed thereby by vertue of the King's Grant, great profit to the King, Whereof he was answered in his Chamber. And as to the new Impositions, the same were never put upon the Wools, Skins, and Leather by him of late, nor upon the Countrey in any part, but only the Subsidies thereof granted in Parliament, and that at the instance and prayer of those who demanded such licences, which payd voluntary and without any compulsion 11 s. the Sack, that is to say, 10 s. to the use of the King, and the twelve pence to the use of the Clerks, writing and perusing the said Licences, which moneys he hath not yet put in certain; and farther saith, that he took nothing thereof to his own profit, by himself nor any other, and that he is ready to prove by all reasonable ways, and thereupon it was witnessed in Parliament by Mr. *Richard Scroop* Chancellor, late Treasurer

of our Lord the King, that *Wil. Walworth* of London in time when the said Loan was made to the King of the said 20 thousand Marks, the said *Wil. Walworth* profered in behalf of himself and his Companions, Merchants of the said Staple of *Callis*, to the Lord *Latimer*, to make a Loan to our Lord the King of 10000*l.* without repaying any thing for increase by Usury, or otherwise by covenant, so that they might be repayed the said ten thousand pounds in their proper hands of the Subsidies due to the King, of their Wool, &c. then next to be passed to *Callis*, and that the King should covenant and grant that no such Licenses shall be henceforth granted to carry Wools, &c. out of the Kingdom, further then the Staple of *Callis*. To which the said Lord *Latimer* answers and saith, that he had no such proffer of them; and the other affirming the contrary, wondered that the said *Wil. Walworth* should make such a proffer. And as to the loss of the said Towns and Forts, and the deliverance of some Spies or Felons so imprisoned; the said Lord also saith that he is not guilty, and that he will prove and avow by all reasonable ways that he ought to do. And thereupon many other Words and Reasons shewn, and Pleas as well in full Parliament, as otherwise before the Prelates and Lords only, as well for the part of our Lord the King, as for the part of the said

saïd Lord *Latimer*, and many Examinations in print, as well as otherwise, after full deliberation thereof had, Judgment was rendered in Parliament against the saïd Lord *Latimer* in these words that follow.

For that the saïd Lord *Latimer* is found in full Parliament in default by his singular Government and Counsel against the profit of the King and his Realm. That is to say, of divers Loans procured unto the Kings loss without necessary cause, and also of Patents made in destruction of the Staple of *Callis*, and also of divers Impositions put upon Wools against the Statute of Parliament in that behalf lately made, he is awarded by the Prelates and Lords in full Parliament to Prison, to be kept in Ward of the Marshall, and to make ransom at the Kings Will; whereupon the saïd Commons beseech the King, for that he is found in such defaults by his singular Counsels, he being in all Offices of the King, and especially one of the Kings Privy Council throughout all that time, it was requested that the King would be pleased to grant that the saïd Lord might go under bail, whereupon the King willed and granted that the saïd Lord *Latimer* should find in Parliament certain Prelates, Lords, and others during the Parliament, to have his Body before the King and the Lords, to answer further to the Articles whereof he was

so arrested under a certain pain and form comprized in a Schedule annexed. And under such Surety, the Marshal of *England* let him go at liberty.

Ibidem, N. 31.

Item, *William Ellis* of great *Jermouth* is impeached and accused in this present Parliament in divers manners, first, viz. by the surmise of the Commons made to him, that the said *William* whilst he was Farmer to our Lord the King of his petty Customs in the Port of great *Jermouth*, and Deputy of *Richard Lions* Farmor of the Subsidies of 6*d.* the pound, granted by our Lord the King of all Merchandises passing out of the Kingdom, and entering in the same, for the safeguard of the Sea, and of the Merchants passing by Sea, and of their Merchandise, he did take by him and his Servants, as well *English* as of Strangers in the said Ports and Members thereof, by way of Extorsion, by colour of his said Offices, many great Sums of Money, and otherwise that he ought not to have done, in great Prejudice, Slander of the King, and damage of the said Realm, and to the Oppression and wrong of the Merchants aforesaid.

And the said *William Ellis* present in Parliament, saith, that true it is, that he is
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one of the Farmers of the said petty Customs of the Merchants passing and coming, saving the purport of the Commissions thereof made, without that that he took the same, or caused any thing to be taken by Extortion, more than was clearly due to the King, and that he was ready to prove to the King, by whatsoever way he ought to do; and the Commons replying said, that the said *William* confessed to them in the Common Assembly in the Chapter House within the Abby of *Westminster* the day before, that he had received the said thirty three pound, and prayed that against his own acknowledgment so openly, and before so many persons, he might not at other times be received to say the contrary. And thereupon the said Commons brought in Parliament *John Botild*, and *Will. Cooper* of *Leimstoft*, and two others, that affirmed they had payed to the said *William Ellis* by the said Merchant of *Scotland*, the said 33 *l.* for full Information of the matter aforesaid, which *John* and *William Cooper* being thereof examined in Parliament, acknowledged that they were obliged to our Lord the King, and to the said *William Ellis*, by their Obligations, or Letters obligatory in the said 33 pounds, together with the said *Scot*, which was their Hoff, and payed at a certain day for the said Subsidy of six pence the pound,

due of all the Merchandises in the said Ship ; and the truth was that the said *Scot* discharged nothing of all the matters aforesaid, at the day of payment, but that they payed to the said *William Ellis* the 33 *l.* and thereupon the said Commons prayed Judgment upon the same *William Ellis*, who said, that although that he had received the said 33 *l.* of *John Botild*, and of the other aforesaid, he received it not but as supposing the same a Gift, and that without condition ; and that as often as concerning the same he should have a Writ or other Commandment of our Lord the King, he would make deliverance thereof, which otherwise he would not do voluntarily. *Item*, afterwards the said *John Botild* and *William Cooper* did put in the Bills in form which followeth. To our thrice doughty Lord the King, and to his Sage Council, sheweth *John Botild* of *Levisloft*, that the Monday next after the *Ascension* of our Lord, in the year of the Reign of our Lord the King that now is, the nine and fortieth, that there was chased by Tempest in *Kirke la Rode*, one Cock-boat of *Gotham* in *Pruse*, whereof the Masters Name was *Henry Luce*, charged with divers Merchandises of the Merchants of *Pruse*, that is to say, Freeze, and other Merchandises. And the same day *William Savage*, Clerk and Servant to *William Ellis*, by Commandment of the said *Willi-*

am Ellis, took of the said Cock-boat for the Merchandizes (neither discharged the same from paying custom then) 17 Nobles and a last of Leather, the price of the last 10*l.* 16*s.* at *Lewistoft* before the boat went out of *Kirke la Rode*, to the great danger of the said Merchants. And because that the said *William Ellis* knew that *Wil. Cooper* would come to this Parliament, and shew this grievance, and others in aid of the Merchants, and also set forth how the great Charter *Huc. Aug.* might be amended in aid of the whole Realm, the said *Wil.* by his false suggestion, caused the said *Wil. Cooper* to be arrested and cast in prison, for the space of 3 weeks; May it please our thrice doughty L. the King and his sage Councel, to make remedy thereof in work of charity. Which Bills passed in absence of the said *Wil. Ellis*, he saith, that as to the said 17 Nobles and Skins, called leather, he could not swear for him, nor for any of the said Merchants of *Pruse*, nor other whatsoever, and the said *John Botild* and *Wil. Cooper* affirming the contrary; at last it was said by the Lords in Parliament, that those Bills touching the entry of the leather, were now in the King's Bench for Tryal. And as to the said Imprisonment, the said *William Ellis* saith, for that he was warned in coming to *London* by many sufficient persons, that the said *John* and *Wil. Cooper*, with

36 other persons of *Lewist.* did lie in wait for the person of the said *Wil. Ellis* at *Wickham* Market in *Suffolk*, and going there in the high way of *Gerneith* from *London*, at such time as the said *W.* was going towards *London*, carrying with him a great sum of the King's Money of the Customes and Subsidies afore-said, and for that the said *W. Ellis* is awarded to prison to make fine and ransom to our said Lord the King, and it is awarded to either of the said *John* and *William Cooper*, twenty pounds for their dammages, and dispences during their said Imprisonment had and suffered. Also it is awarded, that the said Commissions be made to sufficient Gentlemen, to enquire of *William Ellis*, and of all others Deputies of the said *Richard Lyons* throughout the Realm.

Parl. Anno 1 R. 2. n. 32. & 33.

Item, *William Fitz-Hugh* Goldsmith of *London* preferred his Bill in Parliament, in form as followeth: To our thrice excellent and thrice noble Lord the King, and to his thrice Honourable and thrice sage Council, shewen the poor Commons of the mystery and Company of Goldsmiths in the City of *London*: that *John Chichester*, *John Botelham*, and many other Gentlemen, and rich Goldsmiths of that mystery in the same City, by
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their compassing and subtil devising deceitfully have caused many of the said Company to enfeal severally divers obligations, and those who refused so to do, were taken and imprisoned and in danger of death by many grievous threatnings of the said Goldsmiths, who had sealed severally divers obligations, as their poor companions had done before, to cause that the said poor Goldsmiths should not buy nor sell to any Merchant, Cutler, Jeweller, Uphoulsier, nor to any other Foreigner nor Denizen, any goods of their working, except they sold the same at a treble value, and that none of them should carry gilt, nor any other thing of Gold or Silver to any Lady or other person to make profit thereof, and if they did, that the pain comprised in the said Obligations should incur upon them, as before the Mayor, Sheriff, and Aldermen of the said City, as by the confessions of the said rich Goldsmiths it was proved, whereupon it was unreasonably debated, so that it was put by good mediation and advice to the said Mayor, and many of the Aldermen of the City: the said rich and poor Goldsmiths put themselves in Arbitrement of three good Men, for a final accord of all the debates and quarrels between themselves, which Arbitrators assented upon certain points rehearsed to the parties aforesaid, and ordained the same points
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to be affirmed and inrolled in the Parliament for ever, and thereupon the said parties were released. But notwithstanding this Agreement, the said rich Goldsmiths would not assent, nor suffer that the said points be inrolled and holden as the said Arbitrators adjudged: And furthermore by their procurement many mischiefs do from day to day arise to the wrong of the said poor Commons, so far as they are like to be undone (which God defend) and have purchased likewise a new Charter against the said agreement, to the great decay and hurt of the said poor Commons: may it please you (thrice gracious Lords) to ordain and command that the said accord be affirmed, and holden finally for good, and that the said Charter and other things, tending to the prejudice and loss of the said poor Goldsmiths, be made void for God's sake and in the work of Charity. And thereupon the said *John Chichester* and *John Botesham*, and many other Goldsmiths of *London* came in Parliament, and having heard the said Bill, it was forthwith demanded of the said *William Fitz-Hugh*, if he would maintain the said Bill and find pledge to do, and answer that which the Law demandeth, who said that he would do so, but afterwards he could not bring in his surety, nor pledge to answer the said Bill, so was the said
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William Fitz-Hugh commanded to the Tower by the award of the Lords in Parliament.

Ibidem Anno 41.

I*Tem* the said 24th day of December, during yet this present Parliament, *Alice Pierce* was caused to come in the same Parliament before the Prelates and Lords, for to answer certain matters, which by Letters should be surmised against her in the King's Name, and thereupon by commandment of the Prelates and Lords of the said Parliament, Master *Richard Scroop* Treasurer, Steward of the House of our Lord the King rehearsed in Parliament, in the presence of the said *Alice*, an Ordinance made in Parliament holden at *Westminster*, the Monday next after the feast of Saint *George*, the year of the reign of the King, Uncle to our Lord the King that now is, the 50. in these words; For that complaint is made to the King, that many women have pursued in the Courts of the King, divers businesses and quarrels by way of maintenance, and to have a share: which thing displeaseth the King to defend, and that henceforth no woman shall do so; and more especially *Alice Pierce*, upon pain of whatsoever the said *Alice* may forfeit, and to be banished out of the Realm, and after
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this rehearſal made the ſaid Steward ſurmiſed to the ſaid *Alice*; that it ſeemed to the Lords of Parliament that ſhe had incurred the pain comprised in the ſaid Ordinance, and had forfeited againſt the ſaid Ordinances, in certain points, and more eſpecially in two, *viz.* that ſhe ſtayed Maſter *Nicholas Dagworth* Chancellour, when he was ordained by the Councel of the late King to go into *Ireland*, for certain urgent buſineſſes which ſhould have been profitable to our late King, and his Realm; the ſaid *Alice* after the ſaid Ordinance made as aforeſaid, perſwaded the ſaid King in his Court at *Havering*, that at her ſingular purſuit and procurement, the ſaid *Nicholas* was countermanded, and his voyage ſtayed from all that Iſland, to the great damage of our ſaid late King and his Realm.

Item, That whereas *Richard Lions* for miſprifions whereof he was convicted at the ſaid Parliament, holden the ſaid 50. year of our late King *Edward*, ſubmitted himſelf in the Parliament into the favour of the ſaid King (that iſto ſay) his Body, all his Lands and Tenements, and he gave ſome of them to the Earl of *Cambridge*, and ſome of them to Maſter *Thomas Woodſtock* now Earl of *Buckingham*, for term of their lives: the which our late King after having pittie of the ſaid *Richard*, was willing
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by the assent of his Council to shew him favour, and to pardon him the Imprisonment of his Body, and to restore him to certain of his Lands, Goods, and chattels aforesaid, which pardon seemed to our late King and his Council to be a grace sufficient; notwithstanding the said *Alice* so perswaded the said late King in his Court at *Sheen*, that by the singular pursuit, and procurement of the said *Alice*, our late King *Edward* granted to the said *Richard*, all his Lands, Goods, Tenements and chattels aforesaid, together with the said Tenements which he had given to the said Earls for term of their lives as before said, and among the same pardoned the said *Richard* 300 l. of certain Arrearages due by the said *Richard* in the Exchequer, and also granted him a thousand Marks of his Treasure to be received of the said Lady, which pursuit and procurement are contrary to the Ordinance aforesaid. And the said Steward demanded of the said *Alice* how she would excuse her self of those Articles: which *Alice* did answer and say, that she was not guilty of those Articles, and that she is ready to shew and prove by the Testimony of the said Master *John Ipre*, then Steward of the said King *Edward*, and *William Street*, then Controller of his House, *Allen Buxal* Knight, and *Nicholas Carrein* Keeper of the privy Seal of the said King,
and

and others that did then belong to the said King, and afterwards from him to the time supposed, that she committed forfeiture, and that they can discover the truth. And thereupon day is given unto the said *Alice* until Wednesday next, by the *Prelates* and Lords of the Parliament, and it was ordained and assented that those Articles shall be tryed by witnesses and by enquest of those that were of the houthold of the late King *Edward*, whereby the truth may better be known, and thereupon were certain persons examined before the Earl of *March*, the Earl of *Arundel*, the Duke of *Lancaster*, the Earl of *Cambridge*, and the Earl of *Warwick*; that is to say, first Master *Roger Beauchamp*, late Chamberlain of the said King *Edward*, sworn upon the holy Evangelists, and diligently examined touching the Countermand of Master *Nicholas Dagworth*, and upon the other Article concerning the said King's pardon, and favour to *Richard Lyons*, saith upon his Oath, that in presence of the Lady *Alice Pierce* a Bill was delivered to him, which Bill he took, and after he had understood that the same contained the calling back of Master *Nicholas Dagworth* from *Ireland*, for that he was an Enemy to Master *William Windsor*, to that which the Bill supposed he answered, that he durst not prefer it to the King, for that the

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Counsel had ordained the contrary, and the said *Alice* requested him and said that he might safely deliver it to the King, and presently the King demanded of what matter they discoursed, and the said Master *Roger* answered, of a Bill that doth contain such business; and forthwith when the King had understood the Bill, he answered that the Petition was reasonable; and when Master *Roger* replied the Council had ordained to the contrary, the King answered that he himself was agreeing, and that yet it seemed the Bill was reasonable; and commanded him that the said Master *Nicholas* be caused to be called back, which was likewise done, but what Day or Month it was he remembereth not: and as to the matter of *Richard Lions*, the said Mr. *Roger* saith, that he was Chamberlain but an hour, and so knoweth nothing more than he hath said.

Item, Master *Lanc.* diligently examined before the Committees, saith, that he came one day to *Haivering*, and found the Lady *Alice Pierce* there, and forthwith Master *Roger Beauchampe* shewed him a Bill, and after the King understood the matter, he said thus, that it seemed not reason, that one Enemy should be judge of another, and the said Duke answered that he was come between them, but it was so that the said Master *Nicholas* was sent for the profit of the

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Land, and of all the Realm; and therefore it was ordained before the King, that the said Master *Nicholas* and Master *William* do come before the Council, and if the said Master *William* could prove any cause for the Enmity between them, that then the said Master *Nicholas* shall not go, if he well can prove such Enmity; otherwise the Ordinance of the Council made in that behalf, shall stand in force: to which thing the King did well assent for that time, but forthwith the King was assailed in his Chamber by the said Lady *Alice*, and there came in the said Duke and prayed the King that he would not suffer in any sort, that the said Mr. *Nicholas* be called back, who answered, that it should be no otherwise then it was afore ordained before the King; and when he came in that behalf to crave a testimonial favour, he could not obtain it: and the next Morning when the said Duke did his Obeysance to the King in his Bed, the King himself commanded upon his blessing that he suffer not in any manner that the said Master *Nicholas* go into *Ireland*, the Ordinance thereof made the day before to the contrary notwithstanding; and likewise the said Master *Nicholas* was countermanded. And as to the Article of *Richard Lions*, he saith in his Conscience, that the said *Alice* was principal promotrix of the said business; but he was not present when it was done,

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Item, Master *Philip de Bath* sworn, and diligently examined, saith, as to the Article of Master *Nicholas Dagworth*, that he heard not the said Dame *Alice* speak to the King of the same matter, but he heard in the Kings house the said Lady *Alice* make a great murmur and say, that it was no Reason nor Law, that the said Master *Nicholas*, who was an Enemy to the aforesaid Master *William*, should go into *Ireland* to enquire, and do Justice against him, and more he knows not how to say in this matter. But as to the Article of the said *Richard*, he saith, that he was one day at *Sheene* when the said *Richard* was brought before the King, and that he was called into the Kings Chamber to hear those things that were to be done, and when he understood a little of the matter, he would not stay in the Chamber; and further he saith, that there were then in the Kings Chamber, the said Lady *Alice*, *Nicholas Currein*, Master *Allen Buxall*, *Walter Walsingham*, and many others; and saith that she was in the Court, and that the said Lady *Alice* was an Aider and Friend in the business.

Item, *Nicholas Currein* sworn as aforesaid; and diligently examined, saith, that he was commanded by the King to come to *Sheer*, and there he found *Rich. Lyons*; which *Richard* and *Nicholas* were commanded to come before the King to his Bed, and there they

found the Lady *Alice Pierce* sitting at the side of the bed ; and there it was shewn that the King would pardon the said 300 *l.* to which he was yet bound to the King, as of the Arrerages of his Accompt in the Exchequer ; and also the King would give to the said *Richard* a 1000 Marks of his Treasure, and further would make full Restitution of the Tenements which had been given to his Sons, of *Cambridge* and *Woodstock*, as before said. And thereupon the King commanded the said *Nicholas* to say from him his Pleasure to his said Sons, but he saith that he remembreth not if that matter were shewn at that time before the King, by relation of any other Person, or by the Bill of the said *Richard* there read, or otherwise by the said *Richard* himself ; the said *Nicholas* remembers himself very well, that he requested to come before the King, who caused to come from behind the Curtains Master *Allen Buxall*, and other Knights and Bishops which then were there, to testifie that which the King had said to the said *Nicholas* in the said Commandments, and so it was done ; and all the Commandments of the King were rehearsed in presence of all those men.

And as to the matter of Master *Nicholas Dagworth*, he saith ; that he knows nothing but that Master *Roger Beauchampe* sent him to countermand the said Master *Nicholas*.

Item,

Item, Master *Allen Buxall* sworn in like manner, and diligently examined, saith, that one day at *Sheen* after the last Parliament he was called to the King, where he found the Lady *Alice Pierce*, *Nicholas Currein*, and many other Knights and Esquires, which came with him, and there it was rehearsed by the said *Nicholas*, how the King had shewed favour to *Richard Lions* of his Tenements, which were holden by the Earl of *Cambridge*, and Master *Thomas* of *Woodstock*, and had given him a 1000. Marks of his Treasury: And as to that which was done, the said Dame *Alice Pierce* prayed the same Mr. *Allen*, that he would declare to the said Earls the King's will, and his chargings upon the blessing of their father, to cease to extend the Tenements of Master *Allen*, and that that they do it volantly if the King commanded them to do so. And forthwith at the instance of the said *Alice* the King commanded, and it was also done. And as to the Article of Master *Nicholas Dagworth*, he saith, that he knoweth nothing, but that he heard the said Lady *Alice* say many times, that it is not reason nor Law that the said Master *Nicholas* who was Enemy to Master *William Winsor*, should be sent into *Ireland* to make Inquisition of him or against him.

Item, William Street late Controuer of the King's house, sworn in like manner, and diligently examined, saith, that he was one day at *Havering*, when *William* of York spake to the King, of *William Windsor*, in presence of the Lady *Alice Pierce* for to disturb the passage of Master *Nicholas*, and the said Lady *Alice* said, that it was not reason that one Enemy should be Judge of another. And moreover the said *William Street* saith in his conscience, that the said Lady *Alice* was principal and motrix of the said cause, as he verily believes. And as to the Article of *Richard Lions* he knows nothing before it was all finished.

Item, John Beveril sworn in like manner, and dilligently examined, saith, that he heard not at any time the said Lady *Alice* speak to the King concerning neither the one Article nor the other, and that she kept her self well from him, that she spake nothing in his presence, but he thinks in his conscience that she was the promotrix in the said business, for he knows no other which could have followed that matter, and notwithstanding they were caused to come before the said Duke, and the said Earls, Master *Robert Beauchamp*, Master *Allen Buxal*, Master *John Burle*, Master *Phillip de la Page*, Master *John Foxley*,

Foxley, and Thomas Barre, Knight, Nicholas Currein, John Beauchampe of Holt, John Beverly, George Felborough, John Salisbury, William Street, Pierce Cornwall, Thomas Lunden, Lolvin Legat Esquires of the House of the said late King *Edward*: which do say upon their Oaths, that the said *Alice* was principal promotrix to the said King, at his Court at *Havering*, about the feast of *All Saints*, in the fiftieth year of his Reign, concerning that Article, touching the revocation of the said *Nicholas Dagworth*, and for that she was committed.

Item, as to the Article touching *Richard Lions*, they know well that the said *Alice* was well willing, Councelling and aiding to the said business prevailing with the said King at *Sheen* in the Month of *May* last past, and for that she is found guilty in the same impeachment, and the Lords of Parliament that were at Parliament when the said Ordinance was made, remember, that their intention was witnessed, and bearing the force of a Statute, and by the general words (whatsoever the said *Alice* may forfeit) extend as well to the forfeiture of Lands and Tenements, as Goods and Chattels, and all other Possessions, considering the damages and villanies by her done to the King and to the Realm, for that it was in effect to re-

strain, and punish the said Lady *Alice* only
 (wherefore it is awarded in this present
 Parliament, that the said Ordinance have
 the force and effect according to the intent
 aforesaid; that she be banished out of the
 Realm, and her Lands and Chattels, Te-
 nements and Possessions, as well in demean,
 as in reversion be forfeited to the King,
 and seised into his hand; and it is the In-
 tention of the King, and of the Lords,
 and of the Ordinances assented to in the
 same Parliament, that all the Lands where-
 of she hath taken the profit, or bargain-
 ed to her own profit be forfeited, be-
 cause of the fraud which may be presum-
 ed in which she is most abounding; for
 which cause the same shall be forfeited to
 the King, and seised at the other Lands.
 And it is the Intention of the King and
 of the Lords, that this Ordinance and
 award made by the King for such odi-
 ous things in this especial case, which
 may extend to a thousand other persons,
 shall in no other case but this, be taken
 in Example. Likewise it is ordained and
 assented, that notwithstanding the said for-
 feiture, if she purchased any Lands or pos-
 sessions by force or duress, be it by fine
 or by deed, in *pais* or deed inrolled, or
 otherwise, that the purchase be holden
 for nothing; and that the parties which
 per-

perceive themselves agrieved, may have remedy by process in Chancery; and by advice of the GRANDEES of the Council, right shall be done to the parties, and restitution made according the the case demanded; so that the purchases made *bona fide* be not made void nor disannulled by any manner of way. *Et istud rotulum sic factum; & scriptum tradidit & liberavit Edmundus Bradwel Clericus de Corona, &c. hoc in Parlamento assig. Clerico. Parliamenti.*

Ex Rot. Parliam. Anno 7. R. 2. N. 11.

I*Tem*, It is to be understood that the 23th day of May, *Cavendish against Pool, Chancellor.* there was present one John Cavendish of London, Prisoner in this Parliament before the Commons of England, in their Assembly in presence of some Prelates, and Lords Temporal there being, and afterwards before all the Prelates and Lords being in this Parliament; and prayed the Lords, that for Gods sake they would hasten for the peace and safety of his Life, that he may have sufficient surety of the peace of those whereof he complained, and especially demanded surety of the Peace of Master Nicholas de la Pool, Chancellor of ENGLAND, and this Request to him was granted; and thereupon by
Com-

Commandment of the LORDS aforesaid, the said Master *Nicholas* there present, found sureties to be peaceable towards the said *John*; that is to say, the Earl of *Staf-ford*, and the Earl of *Salisbury*, and the said *John* rehearsed how at the last Parli-
 ament he had made pursuit by one *Sa-
 vil* against *Gibbon*, *Mansfield*, *Robert de Par-
 ry*: *John Hamkins*, and *WILLIAM HORS-
 MAN* to have Restitution of certain Goods,
 and Merchandises of great value left up-
 on the Sea, in default of the said *Gibbon*,
Robert, *John*, and *William*, at the time
 when he had undertook the safeguard of
 the Sea; and of the Merchandises passing
 and coming from Sea, for the time against
 all Enemies out of the Power Royal,
 which Bill was indorsed in the said Par-
 liament he confessed, and acknowledged
 in the *Chancery*, for to discontinue and deter-
 mine the matter, by Composition, ac-
 cording to Law and Reason.

And further the said *John* saith, That
 he being a Fishmonger, hath preferred
 at the same Parliament his Bill, for that
 a Clerk, and Familiar of the Chancellor,
 whose Name was *John Otler*, undertook
 that the said Fishmonger should the bet-
 ter have good help in his Case of the
 said Chancellor, before whom his busi-
 ness depended, who was to do Justice to
 High

High and Low; which Clerk demanded Copies of his Bills, and demeaned the whole business that he delivered to him; which when he had viewed and understood, he promised that for forty pounds to the use of his said Lord, and four pounds to his own proper use, he should have his business well and graciously dispatched by his Lord without difficulty; and upon this promise the said *John Cavendish* was well agreed, and granted to pay him the said forty four pound in manner as he should demand the same; but for that he said he had not the Sum ready in his hand to pay, he obliged himself voluntarily to make payment well and lawfully at a certain day, and so it was done, and afterwards the said Fishmonger delivered to the Clerk certain quantity of Herring, Sturgeon, and other Fish, to the value of nine or ten Marks, to the use and behoof of the said Chancellor, in part of payment of the forty pound aforesaid; and three Ells of Scarlet, which cost him two and thirty Shillings, he delivered to the said Clerk in part of payment of the said forty pound which he promised. And further the said *Cavendish* saith, that although he had done so much, and promised to give more to one Person and another always, yet he found not long
Friend-

Friendship, Aid, Favour, nor Succor in effect, in the Person of the said Chancellor, in the said Suit, for all his Cost; and also he saith, that a good part of all sorts came with him to the House of the said Chancellor, to discourse of his matter, where he found there his Adversaries before him, where he encountred them in presence of the said Chancellor: but if the said Chancellor be to be punished for committing of this Affair, or no, he knoweth not, God knows; but he saith, that true it is, that a certain day past, the said Chancellor caused him to be payed for his Fishes, and that he cancelled the Obligation, and that the same was cancelled in Bounty and Conscience; or otherwise to shun a Slander and Reproach in the Case, he knows not now to say; but saith for certain, that for the three Ells of Scarlet he was not yet paid; and thereupon the said Chancellor first of all before the LORDS and COMMONS answereth and saith, That in this Affair, and of all this matter he is innocent in every degree; and first of all as to that that is surmised of him by the Accusation, he now saith, That the said Fishmonger had not been delayed, nor is yet delayed by the said Chancellor, and that Right and Justice is done to him in the said

said Suit, and that the Accusation contains no Truth. And the said Chancellor voucheth to witness all the Judges, and Serjeants of the Realm, who were present in the Chancery many times when the said Matter was pleaded between the Partics; which Suit is pleaded to issue, whereof part lieth in Judgment, and part remaineth untried; so that nothing now remaineth to do, but to render Judgment there of what remaineth in Judgment and Traverses thereof, have been put in for difficulty, and for other cause; and that it is not Truth of the said Chancellor, that the Fishmonger hath now said, that he could not have Justice, and that he is unjustly delayed.

And as to the remnant of the Accusation now made, the said Chancellor swearcth by the SACRAMENT of JESUS CHRIST that he is utterly innocent, and more thereof did never come into his Cognizance, but in manner as he hath said, which is thus, and saith, That of late he had Speech with the Officers of his House to know the Estate thereof, and for ordinary payment of those to whom for the Dispences of his said House he was a Debtor; and there first of all, and before his Officers he demanded how such a quantity of Herring and Sturgeon was brought

brought into his said House, and not by way of bargained-for Provision, and in what manner the same was spent in his House? whereat he marvelled, because he knew not the said Fish-monger, and therewithal he reckoned with his said Officers how such an Obligation was also made by the said Fish-monger, who had a general Suit depending before him, and as soon as the heads of this matter was understood by him, he was much grieved, and in passion did curse and swear to his said Officers, that he would not eat nor drink within his said House, until the said Fish-monger was paid for that which he had sent into his House aforesaid, and the Obligation was utterly cancelled and defaced, and thereupon presently was the said Fish-monger at his commandement caused to come in presence of the said Chancellor, in the Chappel within his House, where he stayed for the present time when he was in *London*, in the same Chappel where our Lord Jesus Christs SACRAMENT was continually; he swore by the same SACRAMENT in presence of his said Clerk, and of the said Fish-monger, that he was never bound to do that which his said Clerk had undertaken, and that he touched nothing of the said Commodities before reckon-

reckoned, nor had knowledge thereof in private or in publick, but by relation of those other Officers in manner aforesaid, and that he was never a partner to the said Covenant made thereof in any manner, nor caused the said Clerk to take the same Obligation, but caused the said Fishmonger to be payed for his Fish aforesaid. And the said Chancellor swore by the SACRAMENT of JESUS CHRIST, that his Excuse now given in, contained full truth, and that he is ready to prove in whatsoever manner it pleaseth our Lord the King, and his Noble Lords of the Realm there present to ordain, and the said Chancellor prayeth to the Lords aforesaid, that they have due consideration to the Estate that he beareth within the Realm by his Office of Chancellor; that it may so please them to ordain him due Remedy and Justice of the said Fish-monger, concerning the Defame and grievous Slander which he had brought upon his Person in Parliament, which is the most high Court of the Realm, and could not accuse the said Chancellor of any thing in his Complaint, but onely the Clerk of the said Lord. And for that the said Fish-monger disclaimeth in part his said Accusation, and so denieth by his own mouth that he had

not

not any bargain with the Person of the said Chancellor but with his said Clerk.

And also, for that as well the said Clerk as the said Fish-monger thereupon examined, acknowledged, that the aforesaid Obligation was made to the said Clerk onely, and in his Name, without naming the Person of the said Chancellor in any part; and that the same Clerk upon his Oath made in the case, had fully excused his Master the said *Chancellour*, that he was not knowing of the said Obligation, nor of the Covenant aforesaid, otherwise then before set forth.

And for that also his said Officers, *Gibbon*, *Robert* and *William*, were personally in this Parliament, and examined upon their Allegiances to say the Truth of their part in this case, answered expressly, that they never gave any thing, nor promised to give reward to the said *Chancellor* in private, nor openly by themselves, or any other person in the world: the Lords aforesaid hold the person of the said *Chancellor* for excused of whatsoever was comprised in the Accusation aforesaid.

And thereupon the said *Chancellor* prayed again to the Lords there, for that as well the said Fish-monger had disavowed his Accusation in part, and for that he might every way be excused therof for any thing that could appear to the judgment of every discreet person
which

which heareth the said Accufation, that for thofe words, which the said Fishmonger had put in his Bill, he the said Fishmonger might be arrested until he had found fufficient fureties to tender him that which fhould be adjudged upon this matter, and efpecially upon the falle flander aforefaid, which he had drawn upon him. And thereupon it was commanded by the Lords, That as well the said Fishmonger, as the said Clerk, fhould be committed, and fo they were committed to prifon, and afterwards they were let go at large; that is to fay, the said Fishmonger by the Mainprife of *Thomas Spicer* and *Stephen Skinner*, who were obliged body for body to have the said Fishmonger from day to day before the Lords aforefaid, or before whatfoever Judges fhould be affigned: And afterwards, for that the Parliament was drawing to an end, and the Lords were alfo greatly bufied there amongft other great bufineffes of the Realm, the said Suit by the Parliament, with all things thereof, was referred to the Judges of the *Kings Bench*, to be heard and determined, as well for our Lord the King as for the Parties.

In Schedula.

Record. fact. apud Westminsterium per
Justiciarios, &c.

ET postea die Martis proximo post Octab.
Trin. viz. 14. die Junii Anno Regni Do-
mini Regis R. 2. post Conquestum 7. Rober-
tus Treilian Capitalis Justiciarius in Banco
ipsius Regis, Robertus Belknap Capitalis Ju-
sticiarius in Communi Banco, & Roger. Ful-
thropp unus Justiciarius in Communi Banco
vigore Commissionis Parliamenti dicti Domini
Regis, apud Novum Sarum ultimo tento fact.
& auctoritate ejusdem Commissionis unde in
rotulo Parliamenti prædicti mentio facta est
specialis, contra quendam Johannem Caven-
dish de London, Fishmonger, qui Parlia-
mento prædicto primo, viz. coram communita-
te regni Ang. congregat. & postmodum alia
vite coram magnatibus ejusdem regni in eodem
Parlamento, de Michaeli de Poole Milite,
Cancellario dicti regni, & Johanne Otte
Clerico ipsius Cancellarii de diversis Mispriso-
nibus sibi per eosdem factis, ut asseruit, gravi-
ter querelavit; & ipsum Cancellarium per hoc
multipliciter accusavit & defamavit processit
in hunc modum.

Imprimis, viz. ipsum Johann. Cavendish,
coram iisdem Justiciariis apud Westminst.
dicto 14 die Junii, assidentibus sibi tunc ibid.

Hugone

Hugone Seagrave Milite, *Thesaurario Angl.*
Magistro Walter de Shirlawe, *Custode* priva-
 ti Sigilli, Johanne Waltham, *Custode* Rotu-
 lorum Cancellariis, nec non Waltero Clopton,
 Willielmo Richeil, & Johanne de Lockon
 serviend. ipsius Regis venire fecerunt, qui ibi-
 dem comparens & de accusatione sua prædict.
 & fact. & in Rotulo Parlamenti prædicti,
 plenius irrotuletur, cujus materia, una cum
 responsionibus per Dominum Cancellarium in
 eodem Parlamento, adhuc in excusationem
 suam datis prout continetur in Rotulo prædict.
 pro majore parte recitat. coram ipso Johanne
 de Cavendish, tunc ibidem allocatum fuit
 per Justiciarios prædict. & super hoc quesiti-
 tum fuit ab eodem, si quid haberet pro se vel
 ulterius dicere sciret, quare ipse penam in
 Statuto contra hujusmodi defamatōres edito
 subire non debeat maxime cum idem Cancellari-
 us se in Parlamento illo excusavit & omni
 alio modo possibili se inde excusare est paratus,
 qui quidem Joh. ad hoc respondebat & dixit
 quod ipse nunquam personam dicti Cancellarii
 in Parlam. illo defamavit, nec aliquid sinistrum
 sive inhonestum de persona ipsius Cancellarii
 clam vel palam in Parlamento ille dixit, vel
 alias affirmavit quovis modo sed dicit quod
 quicquid per eum in hac parte fuerit hoc solum
 de præfato Joh. Outre Clerico ipsius Cancellari-
 ii in ista materia factum, & sententia verbo-
 rum suorum, ac modo & ferma eorundem,

nec non responsionibus ipsius Cancellarii & aliorum ex parte sua hinc inde factis & dictis ibidem debite ponderatis & ulterius habenda respondit ad hoc quod ubi præfatus Joh. Cavendish dixit quod Justiciam coram dicto Domino Cancellario prædict. prout alius prædict. Cancellarius allegavit in eodem Parliam. clare constare debeat cuicunque, discreto & intelligenti, quod idem Joh. Cavendish per accusationem suam prædictam ipsum Cancellar. in eodem Parliam. false defamavit. Per quod consideratum est quod præfatus Joh. Cavendish super defamatione illa convincatur, & idem Cancellar. recuperet versus eum damna sua, & quod Joh. Cavendish prædict. committitur prisonæ Domini Regis ibid. moratur, quo usque tam præfato Cancellario de damnis suis prædictis, quam dicto Domino Regi pro sine competenti sibi inde debito plenarie satisfecerit.

Rotulo Parliamenti, Anno 10. R. 2.
M. 4 & 5.

IN this Parliament all the Commons with one accord, and in one Assembly came before the King, Prelates and Lords, in the Parliament-Chamber, complaining grievously of *Michael de la Pool* Earl of *Sussex*, late Chancellor of *England*, being then present, and accused him by demonstration of word of mouth in manner following,

lowing, that is to say, First, that the said Earl being Chancellor, and sworn to do the profit of the King, purchased of our Lord the King, Lands, Tenements and Rents to a great value, as appears by the Records and Rolls of the Chancery, against his Oath in that behalf, not considering the great necessity of the King and the Realm. And moreover, because the said Earl was Chancellor in the time of the said purchase made, the said Lands and Tenements were extended at a lesser value than they were worth *per annum* by a great Sum, to the deceiving of our Lord the King.

Item, The said Lords were assigned at the last Parliament to view and examine the Estate of the King and Realm, and to declare their advice how the same may be well amended, and put in better Governance and Disposition: And the Examination and Report thereupon made to the King, as well by mouth as in writing, the said late Chancellor said in full Parliament, that the said Advertisement and Ordinance, ought to be put in due execution, and that it was not done in default of him that was the principal Officer.

Item, Whereas the charge was granted by the Commons in the last Parliament,

to be put in certain form, demanded by the Commons, and assented by the King and the Lords, and no otherwise, nor in any other manner than was ordained, many mischiefs were come to the Realm, and it seems true, that they came in default of the said late Chancellor.

Item, It was debated, That whereas one *Tidman* of *Lymberch*, who had to him and his heirs, of the gift of our late King *Edward*, 50 *l.* per annum, of the Custom of *Kingston upon Hull*, which the said *Tidman* forfeited to the King; and also the payment of 50 *l.* a year was discontinued for 20 or 30 years; the said late Chancellor knowing thereof, purchased to him and his heirs of the said *Tidman* the said 50 *l.* a year, and the purchase was until the King ought to enjoy the Profit.

Item, It was debated, whereas the high Master of *S. Anthony* is a Schismatick, and for that cause the King ought to have the Profit which appertaineth to him in the Realm of *England*, the said late Chancellor, who ought to have advanced and procured the Profit of the King, took to farm the said Profit of the King for 20 Marks a year, and there took to his own use goods, and 1000 Marks and more. And that the

the said Master of *St. Anthony* in *England*, which now is, ought to have possession of the said Profit, and he could not have it before he had two persons bound with him by Recognizance in Chancery, and other Instruments, to pay 3000 *l.* yearly to the said late Chancellor, and to *John* his Son 100 *l.* a year for term of their two lives.

Item, That in time of the said late Chancellor there were granted and made divers Charters and Patents of Murthers, Treasons, Felonies, Rasure of Rolls, Sale of Woods, and in especial after the beginning of this Parliament, there were made and enfealed one Charter of certain Franchises granted to the Castle of *Dover*, in the disherison of the Crown, and the Subversion of the Duties of the places and Courts of the King, and of his People.

Item, By the Ordinance that was made in the last *Parliament* for the Town of *Gaunt*, that ten thousand Marks ought to be gathered, and for default of such collection, there ought to be forfeited 3000 Marks, that by default and negligence therein of the said late Chancellor, the said Town was lost, and forthwith the said 10000 Marks paid, and the said 3000 Marks lost by default as aforesaid. Of all which Articles

the said Commons demand Judgment of *Parliament* : Whereunto the said E. made his Answer in manner which followeth.

First, the said Earl saith to the Lords of *Parliament*, how that he was Chancellor of *England*, and the same time did represent the person of the King in his absence, and demanded if he ought to answer without the presence of the King, for that he was impeached of things done in time that he was Chancellor.

Secondly, the said E. had ordained by the advice of his Council, that Master *Richard Scroope* his Brother-in-law, should put in the words of his Answer of the said Impeachments.

Whereunto the Lords replied, That it was honest for him to answer by his own mouth, and thereupon he made protestation that he might add or diminish in his Answer what might be honourable and profitable to him, by advice of his Council. Which thing was granted to him.

And as to the first Article of his Impeachment, that is to say, after that he was Chancellor, that he purchased certain Land of the King, &c. the said E. doth answer, &c. After that he was Chancellor, he at no time purchased any Lands nor Tenements of the King, nor the King gave to

to him any, until the time that the *King* caused him to take the Estate of an Earl, but by way of true Exchange, *viz.* That how the said Earl hath had four hundred Marks a year upon the Custom of *Kingston* upon *Hull* by descent of Inheritance, for which it pleased the King to assign to the said Earl the Lands or Tenements in value; and that he assigned and gave part thereof to the Profit of the King as well yearly as because of a Sum of 1000 Marks paid to to the *King* by the said Earl for that cause. And further saith, that the King at his Progress into *Scotland*, pleased to make Dukes, Bannerets, and Knights, to the honour of him and his Realm, he pleased, without desire or seeking of the said Earl, of his own proper motion, to make him Earl, and commanded him to take the Estate of the Earl of *Suffolk*, in place of him that late died; and after that he named the quantity of that which he had to maintain that Estate, and further saith, that he will assign the quantity of the Lands which were belonging to the said Earl of *Suffolk* who last died.

Item he saith, That the said *Tidman* hath had 50 *l.* a year upon the ancient Custom of *Kingston* upon *Hull*, to him and his Heirs inheritably for ever, whereof King *Edward*,

ward, Unkle of the King that now is, was not paid of a long time, as appears by the Accompts of the Customers of *Kingston upon Hull*, in the Exchequer of our Lord the King, which *Tidman* for 1000 Marks which he owed to the said Earl, granted to him by his deed a long time since the 50 pounds aforesaid, to have and to hold to the said Earl and his Heirs for ever. And because the said Earl made restitution of the Patent of the said *Tidman* to the King, discharged of Arrerages, the K. pardoned the same purchase, without that, that the said Earl then committed or had yet committed any forfeiture or debt against the King concerning the said *Tidman*.

Item, As to the other Article in which there is mention of a Charter granted, &c. he saith that a Warrant came to him for so doing; and for that it was a Castle, and to the Profit of the King, without evil intent of the said Earl, he passed it, not intending then that it was against the Laws. And if any man would have declared or informed the said E. that it had been prejudicial to the King or his Laws, he had not enfealed the same, but would have repealed it, and that yet thereof no damage is come, &c. And as to the other Charters specified in the same Article, he passed them by

by Warrant, without ill intention or covin of his part in any point. And further he prayeth, that no new way be put upon him, otherwise then had been used aforetimes upon any Lord or such Officers, understanding, that if the Chancellor make a Patent against Reason or Law, that such Patent shall be repealed, and such Judgment reversed, without inflicting other punishment upon such Officer or Judge. And the Commons replying to the Answer of the said Earl, concerning the first Article, did shew to the Lords the copy of his Oath, made when he was created Chancellor, in manner as followeth.

YOU shall swear, that well and loyally you will serve our Lord the King and his people, in the Office of Chancellor, and shall do right to all sorts, poor and rich, according to the Laws and Usages of the Realm, and lawfully shall Counsel the King, and his Counsel shall keep. And you shall not be privy, nor suffer any damage, nor disherison to the K. nor that the Rights of the Crown be taken away, if you can any way hinder it; and if you cannot hinder it, you shall make the same clearly and expressly known to the K. together with your Loyal Advice and Counsel; and you shall cause and purchase the profit of the King, by all that lieth in you to do reasonably, so help you God and his holy Gospel.

And

And praying that the same might be read, well understood, and the circumstances of the said Answer considered, *viz.* That he had not denied that he received of the Kings Gift, after that he was made Earl, being in the Office of the said Chancellor, divers Lands and Tenements, which are certain and sure of the value of 400 marks a year, which he hath had upon the Custom of *Kingston upon Hull*, which is casual, and may deceive the King, to his damage in that behalf. And how he said, that he had received part of the said Lands and Tenements, so taken in exchange, before he was Chancellor. The Commons say, that he was then of the Privy Council, and afterwards sworn, in the creation of the Office of Chancellor, by the aforesaid Oath, and he in that Office agreeing to the exchanges, takes and receives the remnant of the said Lands and Tenements in full performance of the exchanges, as by his answer in Parliament aforesaid.

And in Answer to the second Article, the Commons replying, say, That inso-much as he acknowledgeth in his proper protestations, That he represented the Estate of the King, while he was Officer, and so extends his power upon all others: wherefore although default was in others,
he

he cannot therefore be excused, and especially of that which the King had commanded him to speak in *Parliament*, as he had said, he was the more bound to put the said matter in execution, and to confess, what he denied not, the damages are no less than they have furnished : They pray the Judgment of *Parliament*.

And as to the Answer of the fourth Article, the Commons replying, say, That it shall be found of record in the Exchequer, the aforesaid *Tidman* to be debtor to the King in great Sums, as they suppose, and for that cause, the said rent appertains to the King, notwithstanding he had otherwise forfeited, and so the King was deceived ; and they pray that the Records may be examined And further say, That one *Neele Hackney* was killed by his Wife and his Servant, and the said *Tidman*, for which Felony, the said Woman and Servant were arraigned, found guilty, and suffered the Judgment and execution of the Sentence of the Law, and the said *Tidman* as followeth.

And to the Answer of the fifth Article, the Commons prayed again, proposing the example of one *William Thorpe*, late Chief Justice of the *Kings Bench*, furnishing that

that he took 20 *l.* of one party who had an Officer in plea before him, and for that he sold the Law, for which cause he was judged to death and forfeiture of his Lands and Chattels; and say, inso much as the said Earl was so Chancellor, and took 100 *l.* &c. of the said provision there commanded to be deliver'd out of the Kings hands, of his profits, which he ought to have done according to the command of the K. freely, without taking any thing, it seemeth to them that he hath sold the Law and prayen Judgment.

And to the Answer of the sixth Article, the Commons replying, said, That it appertained to him (as wise as he is) to be well advised and counselled, that he assent not, nor do such a thing which may tend to the disherison of the King, and oppression of his people, as he would avoid the Indurance of the Judgment of *Parliament*.

And thereupon the said Earl replying to the Replication of the Commons, touching his Oath, said, That to take the words of the said Oath without other special Intendment, no Chancellor hereafter will in-seale any thing of the Kings grant to any persons, of Lands and Tenements or other Goods,

Goods, without offence of his Oath. But the said Earl saith, That it is not comprised in the said Oath, nor forbidden him to take to himself of the Kings Gift, nor to any other person.

And for that the Kings Gifts to other persons in the said voyage, nor of divers other things before, be not impeached nor holden against the Oath of the Chancellor, it seemeth to him that no more he ought to be impeached for the Gifts given to his personal estate, seeing that in the said Oath it is not forbidden nor restrained to him more than to others, and more especially for that the said Estate, and the Gifts, given are confirmed by *Parliament*; and further saith, that he accepted of his Oath of Chancellor according to his conscience and power; and for the causes before expressed, he saith, as he shall answer before God, that he thinks nothing done in the matters aforesaid against his Oath, or understanding of his Conscience, but that the Chancellor may inſeale the Kings Gifts to the Lords for to maintain their Estate; or for other reasonable cause by the Kings Warrant, and that he had done nothing against his Oath, &c. And saith, that that which is comprised in the Oath, that he suffer no damage, nor disherison of the King, &c. That is to be understood of that which is intended,
of

of matters whereof the King hath not cognizance, and that appeareth by the clause comprised in the Oath, that he shall make known to the King clearly, and expressly : And after that the King is informed in such manner, the Chancellor may do the Kings Commandment without offence of his Oath ; and saith, that concerning his Estate, and what the King gave him, it was expressly done by the Commandment, knowledge, and will of the King, and so not against his Oath, and that it may not be intended that he should be impeached concerning this matter.

Item, As to that, that the Commons say, that the said Earl hath deceived the King ; because he hath taken of the King the Mannor of *Faxfleet* in value 50 pounds ; which Mannor was worth 200 *l. per annum*, &c. The said Earl answereth, that Master *William Morris* hath reported to him that he hath taken of the King the two parts of the said Mannor, with the Rent in *North Dalton*, to serve for 7 years for fifty pound a year, and that he hath lost by the said Farm, in the said time, 100 Marks ; and further saith, that the said Mannor, with the ten Marks of rent in *Dalton*, all together, are extended (as appears in the Chancery) but at 41 *l. 9 s. 3 d. ob.* And for that that the said Earl
un-

understands by the Earl of *Kent*, who hath had the said two parts of the said Mannor, together with the said ten Marks, at the value of 50 Marks, that the intire Mannor could not be above the value of 50 pounds. And further saith, that the said Mannor, with the ten Marks, are not worth more. And that under a certain pain saith, that whatsoever person will sustain the charges of the said Mannor sufficiently, and pay him for the two parts 50 Marks for aid, and as to the third part, be it what it will, let him give security to pay for the said Mannor, with the ten Marks of Rent 50 *l. per annum*, that he will so lease it with all his heart.

Item, As to that Impeachment of the Commons, of 100 pound pension out of the provision of Saint *Anthony*, and that the said Earl should sell the Laws, and put in an Example of Master *William Thorpe*, &c. the said Earl answereth, That the cases are nothing alike, which the parties pleaded before the said Master *William Thorpe*, as before their Judge for the Laws of *England*. In which case no Judges ought to take reward of any parties pleading before them. But the said provision came to him with the help of St. *Pierce* the Pope, and not as a Chancellor or Judge in this case, but

as Father and Friend to *John* his Son. At which time a man knew not if the said *John* had obtained it of the Popes favour or no. Also faults were found by the counsel of the said Earl in the Bulls of the said provision: And from the same cause the said Provisor by his Friends of his own accord proffered an annual Pension of 160 pound for to leave suit in the Court of *Rome* by his said Son, and for that he should not impeach the Bulls: that the matters before said, were not done as before a Judge, but by way of composition, as may be proved by Instrument, and by Witnesses in this Town, and so this matter touched not the Laws of *England*; and always the said Earl intended not but that he should be holden to answer to the party in this case. And thereupon, after the answers of the said Earl given to the Accusations of the said Commons, and the replications to them made of one part, and of another, the said Earl, at the request of the said Commons, for the greatnesses of the defaults so of him furnished, was arrested by Commandment of the King and Commons, in ward of the Constable of *England*, and afterwards let at Liberty upon Bail. And for that the said Earl alledged not in his answer that he observed the effect of his Oath, in that he swore that he would not know

know, nor suffer Damage, nor Disherison clearly and expressly to the King, together with his own lawful Advice and Counsel, and that he should cause and purchase the Profit of the King by all that he could reasonably do ; and he held the Premises, although he were principal Officer of the King, knowing the Estate and necessity of the King, and of the Realm, and did take of the King such Lands and Tenements as is supposed in the Impeachment to him in the said first Article surmised ; and although he alleadged in his Answer, That the Deeds to him so made, were confirmed by full *Parliament*, there is no such accord in the Rolls of *Parliament*, wherefore it is awarded, that all the *Manners, Lands, Tenements, Rents, Services, Fees, Advowsons, Reversions and Profits*, with their *Appurtenances* by him so received of the King, be resealed and reprinted into the Kings hand, to have and to hold to our Lord the King, the Lands and Chattels of the said E. from thenceforth, is not the Intention of the King, nor of the *Lords* ; nor that this Judgment extend in the Law to cause the said E. to lose his Name and Title of Earl, nor of the twenty Pounds a year, which the King granted him, to take of the Issues of the County of *Sussex*, by the Name and Title aforesaid.

And moreover, for that the said E. lately denied that he was of the King's Privy-Council when he demanded of the King the said *Exchange*, and had *acknowledg'd* that before the *Exchanges* performed, he was made Chancellor, in which Office he was bound by his Oath made in the form aforesaid; and he so being sworn to the said Office, took of the King the said 400 Marks of Land, by reason of the said *Exchange*, agreeing to the said Covenant of *Exchange*, which he also made before that he was Chancellor, in which Office he was bound by his Oath; and alleadged not in his said Answer, that the King gave him Mannors, Lands and Tenements, which are certain, and cannot very easily be destroyed, nor be countervailed by the aforesaid 400 Marks annuity, which are leviabie and demandable of the Customs, and also as casual, and in divers cases there may loss ensue; it is awarded, that all the Lands and Tenements so taken by the said Earl, by the *Exchanges* aforesaid, be resumed into the hands of our Lord the King, to hold to him and his Heirs, in manner as he held the same before the Gift or Deed in the said *Exchange*, in which the Issues and Profits aforesaid after the said *Exchange* deducted, if the said Issues and Profits so taken after the *Exchanges* extend.

tend to a greater value than 400 Marks a year, that then the King shall have the overplus of the Lands and Chattels of the said Earl from thenceforth hereafter. And it is therefore awarded, That as well the said Mannor of *Flaxfleet*, and the ten Marks of Rents aforesaid, with the Appurtenances, be reprimed in the King's hand, to hold to him and his Heirs, as he held the same before the Gift to the said Earl, so as the Charter, the Pardon and Confirmation of the Purchase of the said fifty Pounds of Rent be certain in the hands of the King and his Heirs in firm, as it was before the Purchase, and it was since to the said Earl; and that the Issues and Profits received or owing to the use of the said Earl, as well of the said Mannor of *Flaxfleet*, and the ten Marks of Rent, as the Issues and Profits of the said fifty pound of Rent, which he thereof had taken by reason of the Purchase aforesaid, be levied to the use of our Lord the King, of the Lands and Chattels of the said Earl from henceforth.

And as to the Article containing the Provisions of Saint *Anthony*, for that the Master of the House of Saint *Anthony*, in which the Profits were taken, as proved in *England*, was a Schismatick, and taxed for moving the King and Power of *France*,

and by such repute as then, and yet is taken to be; wherefore all the said Profit ought to appertain to the King, as of a *Schismatick* and Alien, which thing of reason ought to have been made known by the said Earl, before he demanded of the King the said Profit, and he knew expressly that he demanded it for his Son as an Hospital, and alledged not in his Answer, that the King when he granted the Profit, was informed of the matters aforesaid; and also in that, that when he was such an Officer as before said, he sent to the Court of *Rome* to have the same Profit for his Son, of the Collation of the *Pope* (as Benefice of the Holy Church) and to have also the Profit out of the King's hand by the Sea Apostolical (as the Record termeth it) and he denies not that he received of the said Profits four hundred pounds *per annum*, alledging that he rendered to the King the same; and that after the said Earl had made a bargain to have the Provision which he claimed of the said Profit in *England* of the *Pope*, an hundred pound *per annum* of the said Provision to him and his Son *John* for term of their two lives, for to deliver the said Profit to the said Provision; for payment of which 100 *l.* to him and his Son, he took Surety of the Provision by Recognizance and

and Obligations of divers Sums, notwithstanding that the King had commanded by his Letters to deliver all the Profit aforesaid out of his hands to the said Provision there; where it seems, for any thing that yet was shewn, that all the said Profit ought to have rested in the King's hand for the causes aforesaid, at least until it had been discussed whether the said Profit were the benefit of holy Church grantable by the Pope; or appurtenant to the K. by reason of Schismatic and Endeminity of the said Master; and he alledged not in his Answer, that the King was clearly informed of the matters aforesaid; wherefore it is awarded, that the said four hundred Marks *per annum*, in time that the said profit was so granted to him by the King, until the time that he delivered the same profit to the said Provision, as also the said 100 *l.* a year received also of the said Provision, until the same be levied to the use of our Lord the King, of his Lands and Chattels, and that all the Profit which should of late appertain to the said Earl by reason of the said Recognizance, or of other Obligations and Covenants also made in surety of Payment. And as also to the 1000 Marks which he had alledged that he payed to the King for the said Exchanges, it is awarded, That the said 1000 Marks

remain in the hands of the King, as part of payment of the Fine and Ransom that the said Earl shall likewise make to the King before he be delivered from Prison.

Ex Rotulo Parlamenti Anno 5. H. 4. N. 11.

I*Tem*, Friday the last day of *February*, the Earl of *Northumberland* came before the King and the Lords and Commons of Parliament, and there the Chancellor of *England* shewed how on *Tuesday* last past he had been before the King, the Lords and Commons in the same Parliament, and there beseeched the King, as he had done at other times at his coming before him in *York*, that it would please our said Lord the King to grant him pardon of those things wherein he hath offended against him, nor keeping his Laws and Statutes as Legeance demandeth, as by a Petition by him preferred in Parliament, written in *English*, whereof the Tenor ensueth, may appear more at large.

*To my most Dreadful and Sovereign Leige-
LORD.*

I Your humble Liege, beseech your Highness to have in remembrance my coming to your Highness, to have in remembrance

brance my coming to your Worshipful
 presence unto *Tork* of my free Will by your
 goodly Letters, where I put me in your
 Grace, as I that nought have kept your
 Laws and Statutes, as Legeance asketh,
 and especially of gathering of Power, and
 giving of Liveries, as that time I put me
 in your Grace, and yet do: And I sent it
 like to your Highness, that all graceless
 should not go. Wherefore I beseech you
 that your High Grace be seen on me at
 this time, and of other things which you
 have examined me of, I have told you
 plainly, and of all I put me wholly in
 your Grace.

Which Petition by Commandment of
 the King, examined by the Justices, for to
 have their Counsell and Advice in this be-
 half, by Protestation made by the said
 Lords, that the Judgment appertained to
 them only, and after reading and under-
 standing of the same Petition before the
 Lords, as Peers of the Parliament, to whom
 such Judgments appertain of right to hear
 and understand by the Statutes made in
 the 25th year of the King that now is, by
 deliberation of King *Edward*, Cousin of
 our Lord the King that now is, they ad-
 judge, That those things which the said
 Earl hath done, contained in the said Pe-
 tition

tion, are not Treason nor Felony, but only Trespass, for which Trespass he ought to make Fine and Ransom according to the Kings pleasure ; wherefore the said Earl most humbly reverenceth our Lord the King, and the said Lords the Peers of Parliament concerning the right Judgment ; and further, the said Earl prayed our Lord the King, that in affirmance of those matters he might be purged from all Suspensions, and prayed to be judged *de novo*, in the presence of the King, and of the Lords and Commons in Parliament ; the said Earl took his Oath upon the Cross of the Archbishop, to be faithful and loyal Liege man to our Lord the King, and to his eldest Son, and to the Heirs issuing of his body, and to his Brothers and their Issue successively and inheritably, at which time if the King would command him, he should be ready to shew and declare that which he knows in that behalf, and set forth the truth thereof. And that our Lord the King might not be deceived, the said Earl was present and (charged in his Liberty) the said Earl upon his Oath which he had made upon the said Cross, setteth forth and declareth openly in Parliament that which he knoweth in this matter : upon which Charge to him given, the said Earl saith ;

That

That at the day of Tryal of his Life he knew not of the Dukes and Bishops, and other Lords, any thing that sounded in derogation of the honourable Estate of the K. and of his Royal Majesty, but that they were, and are to him good and lawful Lieges, and that for such our Lord the King may hold and repute them, and may faithfully put his trust in them in peril of his life, and by the Oath which he had made as before-said. And moreover, the said Earl of *Northumberland* humbly beseeched the Lords, and Earls, and Commoners that they will beseech our Lord the King of his Grace towards him concerning the Fine and Ransom, and if at any time he do any thing against our Lord the King other than Legeancy, that they make no Prayer nor Request for him in whatsoever ensueth thereon, but that they be altogether against him. And also the same *Friday* it was adjudged by the King and the Lords in Parliament, that leave of Battail be made by the said Mr. *Henry* and Mr. *Thomas*, which are holden to be guilty of Treason, and that as well for themselves as for others which shall be in their Company at the time of the said Licence: And those to whom the King had granted Favour and Pardon, the King will, that they stand firmly in their force and vertue.

Ex

Ex Rotulo Parlamenti Anno 31. H. 6. N. 26.

I*Tem*, the Friday the 15. of February it was opened and declared to the Lords Spiritual and Temporal being in the Parliament-Chamber, by the Counsel of the Duke of York, that whereas *Thomas Thorpe* the Monday the first day of *August*, in the Reign of *Henry* the Sixth, 30. came to the place of the Bishop of *Durham*, and then and there took and bore away certain Goods and Cattel of the same Dukes against his Will and License, and thereupon the said Duke came and took an Action by Bill in *Mich.* Term last past, against the said *Thomas* in the Court of Exchequer according to the Priviledge, for so much as the said *Thomas* was one of the Court; to which Bill the said *Thomas* willingly appeared, and had divers days to imparle at his request and desire, and to the said Bill and Action pleaded Not guilty; whereupon there was awarded in the said Exchequer a *Venire facias* to the Sheriff of *Middlesex*, returnable in the said Exchequer; and there by the Jury that passed between the Duke and the said *Thomas*, it was found that the said *Thomas* was guilty of the said Trespass contained in the said Bill; and the same Jury assessed the Damages to the said Duke,

of

of the said Trespass, to a 1000 *l.* and for his Costs 10 *l.* And thereupon Judgment was given in the said Exchequer, and the said *Thomas* according to the course of the Law, was committed to the *Fleet* for the Fine belonging to the King in that behalf. And thereupon it was prayed humbly on the behalf of the said Duke, that it should like their good Lordships, considering that the said Trespass was done and committed by the said *Thomas* since the beginning of the present Parliament; and also the said Bill and Action were taken and scanned, and by process of Law, Judgment given thereupon against the said *Thomas* in time of vacation of the said Parliament, and not in Parliament time; and also that if the said *Thomas* should be relieved by Privilege of Parliament, ere the time that the said Duke be satisfied of his said Damages and Costs, the said Duke should be without remedy in that behalf; That the said *Thomas* according to the Law, be kept in ward according to the time that he have fully satisfied and contented the said Duke of his Damages and Costs; the said Lords Spiritual and Temporal, not intending to impeach or hurt the Liberties and Privileges of them that were come for the Commons of this Land in this present Parliament, but equally after the course of the Law

Law to minister Justice, and to have knowledge what the Law will weigh in that behalf, opened and declared to the Judges the Premises, and asked of them whether the said *Thomas* ought to be delivered from Prison by force and vertue of the Priviledges of *Parliament*, or no ?

To the which Question the Chief Justice, in the name of all the Justices, after some Communication, and mature Deliberation had among them, answered and said, That they ought not to answer to that Question, for it hath not been used aforetime that the Judges should in any wise determine the Priviledges of this High Court of *Parliament*, for it is so high and mighty in its nature, that it may make Law, and that which is Law, it may make no Law ; and the determination and knowledge of that Priviledge belongs to the Lords of *Parliament*, and not to the Judges. But as for the Declaration of Proceedings in the lower Courts in such Cases as Writs of *Superfedeas* of Priviledge of *Parliament*, to be brought and delivered to the said Chief Justice ; he said, there be many and divers *Superfedeas* of Priviledge of *Parliament* brought into the Courts, but there is no general *Superfedeas* brought to surcease all Process, but if there should be, it should seem that this High Court of *Parliament*

liament that ministreth all Justice, should let the *Process* of the Common Law, and so it should put off the Party complainant without Remedy; for so much as Actions of Common Law be not determined in this High Court of Parliament; and if any person that is a Member of this High Court of Parliament, be arrested in such cases as be not for Felony or Treason, or security of the Peace, or for Condemnation had before a Parliament, it is used that all such Persons should be released of all such Arrests, and make an *Attorney*, so that they may have their freedom and liberty freely to attend the Parliament.

After which Answer and Declaration, it was throughly agreed, assented, and concluded by the Lords Spiritual and Temporal, that the said *Thomas* according to the Law, should remain still in Prison for the Causes abovesaid, the Priviledge of Parliament, or that the said *Thomas* was Speaker of the said Parliament, notwithstanding; and that the Premises should be opened and declared to them that were comen for the Commons of this Land, and they should be charged and commanded in the King's Name, that they with good haile and speed proceed to the Election of another Speaker. The which Premises, forasmuch as they were matters in
Law,

Law, by the Commandment of the Lords were opened and declared to the Commons by the mouth of *Walter Moyle* one of the Serjeants at Law, in the presence of the Bishop of *Ely*, in the King's Name, that they should proceed to the Election of another Speaker, with all godly haste and speed; so that the matter for which the K. called this Parliament, took good and effectual conclusion and end.

Item 16. die Febr. tunc proximo sequenti præfati Communes, & quidam de sociis suis declaraverunt Dominis Spiritualibus & Temporalibus in præfenti Parlamento, quòd ipsi per mandatum ex parte Domini Regis pridie sibi injunct. cum omni diligentia exequentes eligerunt loco præfat. Thom. Thorp, Thom. Carleton militem prolocutorem suum humillimè deprecando quatenus præfatus Dominus Rex hujusmodi electionem vellet acceptare.

Quibus per Dominum Cancellarium Angliæ de mandato dicti Domini Regis, & advisamento Consilii extitit respons. quòd quidem Dominus Rex de electione præfenti Thom. Carleton se benè contentavit injungendo eis quatenus ad expeditionem negotiorum Parliamenti prædicti cum omni diligentia procederent.

Judgments

Judgments upon Writs of Error in

PARLIAMENT T. *See ante p. 3. of*
Scotch's Remonstr.

IF erroneous Judgments be given in the Rot. Parl. Kings Bench, or in the Exchequer-
Chamber, upon the Statute of 27 Eliz. cap. 18. the party may have his Writ of Error returnable in Parliament; but not upon Judgment given in the Common Pleas, until the same be reversed or affirmed in the Kings Bench, as it was answered in Parliament under Edward the Third, in the Case of the Bishop of Norwich. Upon the Writ of Error the Lord Chief Justice of the Kings Bench is to bring in the Record, and a Transcript of it into the Parliament, and there leaveth the Transcript, but carrieth the Record back; and thereupon the Errors being assigned, or as some Examples are, before the *Assignamus* of the Errors, order is to be given that a *Scire facias* be awarded against the Defendant, upon whose Appearance and Examination of the Errors by the Lords, the Judgment is either affirmed or reversed.

30 E. 3. Art. 48.
22 E. 3. fo. 3. Had-
low's Case, Parl. 1
R. 2. m. 3. Art. 28.
2 R. 2. Art. 19.
20 R. 2. Art. 26. the
case of the
Earl of Sa-
isbury.
Parl. 15
R. 2. m. 5.
Art. 23, &
16. Art. 8,
& 17. Art.
13, & 18.
the Case of
the Dean
and Chap-
ter of
Lichfield,
and the

Prior of Newport-pamel, 1 H. 7. fo. 20. Flowerden's Case.

I

After

After the Record thus brought in, *Clericus Parliamenti habet inde Custodiam & per duos tantum & non per Communitatem assignabitur Senescallus, qui cum Dominis Spiritualibus ac Temporalibus per Consilium Justiciariorum procedat ad errorem corrigendum.*

In which words it is observed, that the Lords have power to make a Delegation of their Jurisdiction to a person chosen out of themselves, as a Steward to judge for them, & also they did in their Proceedings against *Gomeniz* and *Weston* under *Richard* the Second, when they appointed the Lord *Scroope* for Steward of the Parliament to arraign the Offenders; but this rests at their pleasure, whether they will judge themselves together, or so appoint a Steward.

Memorandum quod *Christopherus Wray* miles, capital. Justiciarius de Banco Regis secum adduxit in Par. in camera Parl. inter duos bre. de errore & billa de Regina indors. ac rotulat. In quibus continebantur placita & processus in quibus supponebatur error, & ib. reliquit transcript. totius Recordi cum Cler. Parl. & super hoc venit *Richardus Herbert*, *Joh. Awbrey*, *Willielmus Filius*, & *Simon Brown*, in propriis personis suis in Parlamento, & statim dixerunt quod in recordo & processu predict. in redditione Judicii predict.

prædict. manifestè est erratum in hoc quod post-
quam Judicium prædict. in loquela prædict.
versus præfat. Thom. Gomieli redit. fuit &
antequam prædict. Johannes Hunt persecutus
fuit & impetravit prædict. primum breve de
scire facias versus præfat. Thom. Rich. Her-
bert & ceteros prædictos manucaptos præ-
dict. Thom. Gomieli nullum breve de capias
ad satisfaciendum pro debito & damnis, præ-
dict. per præfat. Johannem Hunt. in Parlia-
mento prædict. prosequendo. Et retornat. fuit
versus præfat. Thom. Gomieli, ubi per con-
suetudinem Curie dictæ Domine Regine coram
ipsa Regina à tempore contrarii memoria ho-
minum non existit in eadem usitat. & approbat.
breve de Cap. ad satisfaciendum versus eundem
Thom. Gomieli, pro debito & damnis prædict.
Parl. prædict. prosequi & retornari debet ante-
quam aliquid breve de sci. fac. versus manu-
captos prædict. in loquela illa impetrant. seu
prosequi deberet licet consuetudo, & forum
captionum recognitionum in Curia prædict. usi
fuerant in forma prædict. viz. si contigerit
eundem Thomam Gomieli in Parlamento
prædict. convinci, tunc iisdem manucaptos
concesserunt & quilibet eorum per se concessit
tam prædict. debitum quam omnia damna &
castigat. &c. præfat. Joh. Hunt in ea parte
adjudicentur de terris, & catallis, & eorum
cujuslibet fieri & ad opus prædict. Johannis
Hunt, levari si contigerit prædict. Thom.

1 2
Gomieli

Gomiel debitum & damna illa prefat. Jo-
hannis Hunt minime solvere aut se Prisonæ
Marescal. Domine Regine coram ipsa Re-
gina ea occasione non reddere, &c. Et petiere
videm Rich. Herbert & alii prædict. quod
Judicium prædict. & Processus super bre. de
scire fac. prosecut. in Curia Domine Regine
coram ipsa Regina revocetur, adnulletur, &
penitus pro nullo habeatur. Et super hoc Do-
mini per consensum Justiciariorum post longam
& maturam deliberationem cum consensu ad-
judicaverunt quod Judicium prædict. & Pro-
cessus super bre. de scire fac. prosecut. in Curia
dict. Domin. Regine coram ipsa Domina Re-
gina revocetur, adnulletur, & penitus pro nullo
habeatur.

CHAP. V.

*Bills passed, and Judgments given without
assent of the Lords Spiritual.*

Rot. Parl.

20 E. 3. n.

33.35.38.

See also to

this pur-

pose, 25

E. stat.

Carl. & 25

E. 3. stat.

de Provi-

sion.

Under Edward the Third a Petition
of the Commons was thus.

*Item, we are not willing to suffer that
payment be made to Cardinals for their
journeying into France, for to treat out of
the Realm of England.*

The Answer is, as to the dispences of
Cardinals, it seemeth to all the Baronage,
and

and other Sages of the King's Council, that the Commons demanded reason; and for that they are agreed that it shall be so.

The like is there in the two Petitions of the *Commons* against the Clergy carrying Money to *Rome*, and Cardinals having Benefices here; divers Ordinances against the Church of *Rome* are agreed by the K. the Lay Peers and *Commons*; but all the *Prelates* made Protestation of not assenting, or doing what may be, or turn in prejudice of their Estate or Dignity.

The power and direction for Justices of the Peace, is ordained at the complaint of the Commons by the King, by the assent of the Lords Temporal; and so also divers times without mention of the Lords Spiritual, who indeed under *Edward* the third, protested that they had not to do with matters of keeping the peace.

The Commons exhibit a Petition against Procurations from *Rome*, and Benefices obtained by Letters thence, &c. It is ordained and established by the King, by the advice and assent of the Lords Temporal, that no Benefice is to be had here, but by Gift from the King's Subjects, &c. and if that any do contrary to this Act, he should incur the danger of a *Premunire* given by the Statute of 27 E. 3.

Rit. Par. 3.

R. 2. M. 3.

N. 37. fine

12.

Rot. 11 R.

2. M. 2.

Ass. 34.

part.

A Petition in these words: *Item*, That the Appeals, Pursuits, Accusations, Judgments had and rendred, &c. should be good, notwithstanding the Lords Spiritual, and the Procurators of the Lords Spiritual absented themselves out of Parliament in time of the said Judgments rendred, for salvation of their Estate, as it is contained in a protestation, by which the Lords Spiritual and Procurators were in this present Parliament, &c.

The King granteth it; and the Protestation of the Clergy is entred as followeth.

Forasmuch as certain matters were moved in this present Parliament, touching openly the Crime of the Archbishop of Canterbury, and the other Prelates of his Province, who made Protestation in the form and words which follows.

IN Dei Nomine, Amen, Cum de jure & consuetudine regni Angl. ad Archiep. Canturbur. qui pro tempore fuerit, nec non ceteros suos Suffragandos, Censfratres & Coepri. Abbatas & Priores, aliosque Prelatos quoscunq; per Baroniam de Domino Rege tenentes pertinet in Parliamentum Regis quibuscunq; ut pares regni prædicti personaliter interesse ibidemq; de regni negotiis & aliis ibi tractare consuevis, cum ceteris dicti regni paribus & aliis consu-

consulere, ordinare, statuere, & definire, ac cætera facere quæ Parliamenti, tempore ibid. incendet. faciend. in quibus omnibus & singulis nos Willielmus Cant. Archiepiscopus totius Angl. Primas, & Angl. Sedis Legatus, pro nobis nostrisque Suffraganeis, Coep. & Confratribus, nec non Abbatibus, Prioribus & Prelatis, omnibus supradictis potest. & eorum quilibet potestatur qui per se, vel Procuratorem si fuerit modo presens & publicè & expressè quod intendimus & intendi volumus, ce vult eorum quilibet in hoc presenti Parlamento & aliis ut pares regni prædicti more solito interesse considerare, tractare, ordinare, statuere, & definire, ac cætera exercere cum cæteris jus interessendi habentibus eisdem statu & ordine juris, & eorum cuilibet in omnibus semper saluum verum, quia in presenti Parlamento agitur de nonnullis materiis, in quibus non licet nobis alicui eorum juxta sacrorum Canonum Instituta, quomodo libet personaliter interesse; eo propter pro nobis & eorum quolibet protestamus, & eorum quilibet hic præsens etiam protestatur quod non intendimus, nec volumus; sicuti de jure non possumus nec debemus intendi, nec vult aliquis

It was ordained in a Council held at Westminster, that no Clergyman should

Agitare judicium, and he that did, was to be deprived of his Dignity and Orders, Roger de Houenden in H. 2. pag. 30. 10. & Geruaf.

eorundem in presenti Parlamento, dum de
 hujusmodi materiis agitur vel agetur, quomo-
 do libet interesse, sed nos & eorum quemli-
 bet in ea parte penitus absentare in re pari-
 tatis nostra, & cujuslibet eorum interessend.
 in dicto Parlamento, quoad omnia & singula
 ibidem exercenda juris, & eorum quilibet sta-
 tu & ordine in omnibus semper salvo. Ad
 hoc insuper potestatur, & eorum quilibet po-
 testatur quod propter hujusmodi absentiam non
 intendimus, nec volumus, nec eorum aliquis
 intendit, nec vult quod habet processus, &
 habend. in presenti Parlamento, super materiis
 antedictis. In quibus nec possumus, nec de-
 bemus, & permittitur interesse quantum ad nos
 & quemlibet eorum attinet futuris tempori-
 bus quomodo libet impugnentur, infirmentur,
 seu etiam revocentur.

Rot. proces.
 & Judicii
 prob. 11 R.
 2.

Which Protestation read in full Parlia-
 ment by the Commandment of the King,
 and Assent of the Lords Temporal and
 Commons; in like manner make prote-
 station the Bishop of *Duresme* and *Carlisle*,
mutatis mutandis. This was upon the oc-
 casion of the Appeal of Treason in the
 same Parliament, commenced by *Thomas*
Duke of Gloucester, and others, against *A-*
lexander Archbishop of York, *Robert de Vere*
Duke of Ireland, and others.

But

But although they thus absented themselves, they made no Proxy at this time to assent in their room, as afterwards they agreed to do in cases of Judgment of Death. But the first use of such Proxies is in the 21 *Rich.* the 2. neither at all are such Proxies, or assent of the Bishops. For under *H.* 5. the Earl of *Salisbury* by Petition, in the nature of a Writ of Error, shewed that the Attainder of *John* the late Earl, Father to the Petitioner in the second of *H.* the 4. might now be reversed; and amongst the Errors assigned, one was, that he had been adjudged *sans assent* in Parliament, but it was in Parliament now adjudged that it was no Error.

The Archbishops of *Cant.* and *York*, for themselves and their Clergy make Protestation not to consent to any Statute made in this Parliament, *Quatenus ea in restrictione potestatis Apostolicæ, aut in eversione Ecclesiæ dignitatis tendere dignoscuntur*; which at their request was inrolled in Parliament: yet an Act passed at that time, and is publick against the Pope's giving of Benefices by way of Provision in *England*.

In the beginning of Queen *Elizabeth's* Reign, when divers Acts passed touching matters of the Church, as Service and Sacraments, and Church-possessions, &c. the most others, is *domin. tam spiritualium quam temporalium assensu*.

Rot. Parl.
2 *H.* 4. &
Rot. Parl.
2 *H.* 5.

Rot. Parl.
13 *H.* 2.
Act. 24.
Holerts in
Reg. Courtney, 332.

Eyer i E.
liz. Parlia.
yet the Act
of this
year, as of

Bills

Bills passed *dissentientibus* all the Bishops, as it is especially entred in the Journals with particular enumeration of all their names.

7 H. 8. f.
104. b. vel
184. b.

Whereunto may be added that assertion of the Judges in that deliberation had under Henry the eighth, touching the power Royal in the Church, as the words were reported, That our Lord the King may well enough hold the Parliament by himself, and all his Temporal Lords, without the Spiritual Lords, &c.

CHAP. VI.

Their appointing Judges out of themselves for Examination of Judgments and delays of other Courts.

Stat. 14 E.
3. cap. 5.

THIS is given them by a Statute of Edward the third, in these words: Likewise for that many Mischiefs are come, &c. That divers places as well in the Chancery as the Kings Bench, Common-Pleas, and the Exchequer, the Justices assigned, and other Justices to hear and determine the Judgments, wherein have been delays sometimes by difficulty, sometimes by divers opinions of the Judges; and sometimes by other occasions, it is assented, established, and agreed, That of the
Com-

Commons beforeſaid, in every Parliament there be one Prelate, two Earls, and two Barons, that ſhall have Commiſſion and Power of the King (which Priviledge is now taken away from the Prelacy by Act of Parliament, *Anno 17 Car.*) to hear by Petition to them delivered, the Plaints of all thoſe which complain of ſuch delays, or grievances done to them, and that they have power to cauſe to come before them at *Weſtminſter*, or in any other places where the Parliament ſhall be holden, and the Courts of Records and Proceſſes of ſuch Judgments as are delayed, and ſhall cauſe to come before them the ſame Juſtices, who ſhall be there preſent to hear the cauſe, and their reaſon alſo heard by good advice of them, the Chancellor, three Juſtices of one Bench, and of the other, and others of the King's Council.

And in the ſame Parliament accordingly, the Archbiſhop of *Canterbury*, the Earls of *Arundel* and *Huntington*, and the Lord *Wake*, and the Lord *Baſſet*, were aſſigned to the ſame purpoſe; and although the Juſtices, Chancellor, Treafurer, Privy-Seal, and others had before taken Oath, &c. yet it was ordained, that thoſe of the Baronage aſſigned, ſhall give them a new Oath, and increaſe and diminith the Miniſters of Juſtice, as they ſhall ſee cauſe.

CHAP.

CHAP. VII.

Their Tenants of ancient Tenancies, being discharged of paying the Charges of Knights of the Shire.

Rot. Parl.
28 E. 3.
Petit. 7.

THE Commons exhibit a Petition, That whereas the Tenants of the Lords that did hold by Barony, and Summons to the Parliament, might not be discharged of paying towards the Expences of Knights, &c. that the King would declare the certainty of it : But the Answer of it is only, As at other times, &c.

28 E. 3.
Petit. 7.

A like Petition and Answer is afterwards under the same King, in a Petition touching the same thing : Under *Richard* the 2. it is supposed that all ought to pay, but those which come in Parliament by Summons, by Writ, and do stay there at their own Charges, &c.

Parl. 15 R.
2. art. 37.

In a Petition afterwards, it is supposed, that the Tennants of such Lands as were immediately held of the Lords of the Parliament contributed not to those expences; but it is complained against, and the Answer is only, Let it be as at other times, and if that any found himself agrieved, he should have remedy in the Chancery ; yet by a Statute which is not in the Rolls of
three

three years before, the Tenants of the Lords themselves shall pay for such Lands as of late times they have purchased before, being contributory. *Stat. 12 R. 2. c. 12. & H. 4. fol. 1.*

To this belongs that in *Fitzberbert*, the Villains of Lords which come to Parliament shall not be therefore contributory to the Expences of the Earls which come to Parliament. And to this purpose the Lords may by Letters in their own Names command the Sheriff that he distrain not their Villains. *Nat. Brev. fol. 228.*

THE

The Second kind of their

PRIVILEGES.

Priviledges, or special Rights, that concern the Barons that have place in Parliament, as they are every one single in their private Estates.

CHAP. I.

Touching the Oath and Protestation upon Honour.

17 Johan.

reg. p. 330.

41 H. 1.

Idem pag.

395. &

1315. 3

H. 6.

Ro. Parl. 10.

Rot. Parl. 7

8 & H. 4. M

14. art. 66.

& H. 4. rot.

Parl. 39.

Stat. 21 R.

2. c. 3 & 4.

ALL Oaths being either promissory or assentatory, and the first being that which binds to a future performance of Trust.

The second, that which is taken for discovery of a past or present truth.

The first kind, they as occasion requir'd used in taking the Oath of all the Barons for the maintenance of the great Charter, and the like was under King *John* and *H. 3.* as also swearing of the Lords in Parliament in the time of *H. the 6.* that they should not take

take parts in the great Controversie between the Earl Marshal, and the Earl of *Warwick*, and the oaths of divers Lords appointed for the keeping of the Parliament in 8 & 11 *H. 4.* where yet the Prince was not sworn, being one of those appointed for the keeping of the ordinances, Because of the highness and excellency of his honorable person, as the words are in the Roll: So under *H. the 7.* the Lords Spiritual and Temporal swore in the Parliament to the Article of taking care for the preserving of the peace, and under *H. the 8.* to the Bill of Succession; but under *Richard the Second*, the Archbishop of *Canterbury* challenged, that neither he nor his predecessors were compellable to any Oath, but to the K. and this kind of Oath is frequently taken by such Barons as undertake the great Offices of the Kingdom, and they are all liable to the like by their tenures, by fealty and by Statutes of the Oath of Allegiance; but of these kinds of Oaths for the Supremacy they are discharged by the first Statute that gives it; and in the case of *Essoynes*, wherein by the ancient Law, the *Essoiner* was to swear that the party *Essoined* should appear at a certain day, all Barons and Baronesses were excepted from the Oath, and instead of the Oath they put in surety, *Ratio vero diversitatis*
(14th

Rot. Parl. 1
H. 7. Parl. 1.
an. 14. mt.
15.

Dyer, 15 H.
8. Parl.
Stat. Jac.
14 & 7.
cap. 6.

Stat. 15 E-
lix. c. 4. vel
1.

Lib. 5. c. de
Essonii, c. 2. (saith Bracton) *talis esse poterit ut videtur*
Et 3. c. 3. *quod ita nobiles & dignæ persone in warranti-*
fo. 281. *zatione Essonii non per se jurabant sed per pro-*
curatores (scilicet) plegios suos.

Assentory Oaths are in Cases of tryal by
 12 or 24 witnesses defendants, which pro-
 ceed by Bill and Answer.

1 Henry 4.
 fol. 1. 2. 10
 E. 4. fo. 6.
 H. 8. fol. 12.

a. Stamford. lib. 3. Cap. 1. Cooke, Liber 3. fol. 30. 6.

Plaintiff's examined in actions of debt
 brought upon arrearages of accompt in cases
 of tryal by 12, they are discharged of the
 Oath that is in cases of tryal of their
 Peers, in which they answer Guilty or Not
 guilty, only upon honour; for in other
 tryals they have no part, but are exemp-
 ted from being impanelled in Juries,
Nisi eorum Sacramentum adeo sit neces-
sarium quod sine illis veritas inquiri non
possit, and thence was it that some Barons
 under Edward the first, of the Marches of
 Wales, refused to swear before the Justices
 of Oyer and Terminer upon an Enquiry to
 be made by them, and others, of certain
 outrages committed by Gilbert of Clare,
 Earl of Gloucester, against Humphrey of
 Bohun Earl of Hereford and Sussex; those
 Barons were John de Hastings, John Fitz-
 Raynold, Roger de Mortimer, Theobald of
 Weldon, John Troger, and Jefferey of Cam-
 vill, to whom *dictum est* (as the Roll saith)

Regist. orig.
 f. 179. b.
 Fitz. Nat.
 bre. f. 155.
 eodem Parl.
 in arce
 London 20
 E. 1. Coram
 Rege, Ret.
 recep. Scac-
 carii.

ex parte Regis quod pro statu & Jure Regis, & pro conservatione dignitatis Coronæ & pacis sue apponit manum ad libitum, ad faciendum id quod eis ex parte injungetur qui omnes unanimiter responderent, quod ipsi vel eorum antecessores hactenus in hujusmodi casu, ad præstandum Sacramentum aliquid coacti fuerunt.

And afterwards the Oath being offered them, they answered every one by themselves, *quod nihil inde facerent sine consideratione parium suorum.*

Barons being witnesses, in Cases of witnesses, Examples are, that they give in their Testimonies only upon Honour.

IN the Courts of the Delegates in the 3^d *Art. in foro* of E. 6, in the proceedings against *deleg. 1550.* Gardiner Bishop of Winchester, upon a special Commission from the King, the then L. Chancellor, and Marquis of Northum. and the Earl of Wiltsh. and Bedford, are examined only upon their honor or sometime upon allegiance or fidelity to God and the K. and this was upon the special privilege of such persons, for both by the Civil Laws and Common, no testimony is taken regularly but upon Oath.

In Chancery in a Case between Jeffery *Mich. 12:* and Jeffery, and in another between Bligh- *Eliz. in ar.* *Cur. apud* *ton* *Examiner.*

ton and Dantrey, *Thomas Lord Buckhurst*, under *Queen Elizabeth*; delivers his testimony only upon honour.

Rot. pro. 10

R. 2. & 10.

in ar. Lond.

In the Court of Chivalery under *Rich. the 2*, in the great Case between *Sir Rich. Scroope* appellant, and *Sir Robert Gravenor* defendant, touching matter of Arms, the Attestations taken by Commission from *John of Gaunt*, the Earl of *Darby*, the E. of *Northumberland*, the Duke of *York*, and the Earl of *Arundel*, are for ought appears without oath; for whereas others are sworn, the Entry of their deposition is, (Pray and requests according to the right of Arms, by the procurator of Master *Rich. Scroope*, to testify and say, &c.)

And amongst others the Earl of *Devonshire* was examined by Commission, by *John Kentwood*, who in the return of his Commission and the depositions, certifies the Court, that he had sworn all the witnesses, there being none of the Nobility but only the Earl in his return, who was not sworn, but spake in the loyalty of his Chivalery.

But in the multitude of witnesses of this cause, divers Barons are sworn, as the Lord *Poynings*, the Lord *Scales*, the Lord *Gray*, the Lord *Kutben*, the Lord *Basset*. To every of which names in the attestations is added (Sworn and Examined) And agreeable

agreeable hereunto is the examination in *Rot. Parl.*
 the Case of *Alice Pierce*, in the beginning *1 R. 2. art.*
Rich. the 2. *41.*

Barons answering to Bills as Defendants.

For Barons answering in Chancery as Defendants, are divers presidents of such their answers in the times of *H. the 7.* and *Henry the eight*; but there are none of that time that clears it whether they were sworn or no; for the answers of that time, as also of the time following, till about the middle of *Elizabeth* or later, are frequently filed without any *Jurat.* to them.

BUT under Queen *Mary*, in a suit by *20 R. 3. &*
William Armer against *Thomas Lord M. & Juste*
Wentworth, touching the Inheritance of *in Success.*
Copy-holders in Stepney, the Defendant presents in his answer with Master *Sackford's* hand to it, who was his Council. (And on the upper part of his answer where *Jurat.* is sometimes but rarely in that Age written) these words are found, This answer is made by Council, and the Defendant not sworn by order of Court.

Then in Queen *Elizabeth's* time the Lord *Dacres* being Plaintiff against the Lord *Buckhurst*, and *Parker*, and *Manwood*, these two defendants are sworn, but not the Lord *Buckhurst*.

And afterwards the Lord *Buckburst's* answer is inscribed *per traditionem Comitisse super honorem suum*. So the Countess of *Northumberland*: in *virtute honoris sui agnovit responsionem suam esse veram*: as the entry is upon her answer at that time.

And in the Countess of *Rutlands* Case, where she with Sir *George Shaworth* were Defendants about the latter end of Queen *Elizabeth*, the *Dedimus potestatem* was to answer upon his Oath *super Evangelia*, as also a *Dedimus* towards the end of Queen *Elizabeth*, was directed to *Roger Bromeley*, and *Richard* upon the Bill of complaint of one *Brooke* against *George Earl of Huntington*, to take his Oath *super honorem*, &c. About which time also the Lord *Eure* put in his answer *super honorem* only to the Bill of *John Barnes* and *Robert Talbois*.

In other Courts, as the *Star-Chamber*, and Court of *Wards*, it was questioned in Queen *Elizabeth's* time, whether Barons being Defendants, should put in their answers upon Oath: and in the Court of *Wards* an Order was made in the Lord *Mountagues* case, that they should, and that so the course should be henceforth constant. The like course hath been held of late in the *Star-Chamber*, as also in the Ecclesiastical proceedings, and about the end of Queen *Elizabeth's* time in *Chancery*; also the Lord *Wharton* by a compulsory

78 Junii.
Mich. 21
15 32 Eliz.

32 Eliz.

44 Eliz.

7 Sept. Mr.
42 & 43
Eliz.

40 Eliz.
apud Tet-
hill.

Ordo 10.
lib. 10 Jac.
in Chanc.

pulfory order answered there upon Oath. And within these few days the Earl of *Shrewsbury* was ordered to answer upon Oath to one *Revell*, being Plaintiff there, and divers Noble men have been sworn to their answers in *Chancery* since the beginning of the King, and some in Queen *Elizabeths* time also. Neither is time of Queen *Mary* and *Edward* the sixth, wholly without example; but the sum of all seem this, that according to the claim of the Barons in 20 *E. 1.* they were not anciently till about the end of Queen *Elizabeth*, or the time of King *James*, and of our present Sovereign, compellable to swear to their answers, for the first compulfory order falls in the 33 of *Eliz.* in the Court of *Wards*, but that some of them taking no advantage of their privileges in this case, voluntarily took the Oath, and others standing upon their ancient right, put it in only upon honour, as also we see in that case of *Gravenor* and *Scroape*, and *Alice Pierce* under *Richard* the First; for if it were not a special Privilege, it will fall out, that in all the Examples, where they were not sworn, the Judges committed great injustice in receiving their answers, and depositions without Oath, if they had not been subject by compulsion to an Oath, no otherwise then if a Judge of the Common Law should admit e-

Mic. 4 Jac
Mic. Winton
5. Con.
Pemb. Pas.
6. Con.
Sinc. Hil 7.
Com. Dec.
let & Di-
minus Ras-
fel Pas.
5 Jac.
Hughton
1 Eliz.
Batter
vers Dyn.
Mordant
M. 12 & 13
Eliz.
Camp. v.
Com. Bed.
jud. Mich.
21, 22 Eliz.
ibidem Bat.
vers. Dom.
Rich. Hill.
4. Viscount
Montag.
Exc. H. 3.
& 4.

vidence given to a Jury, or take a Verdict without Oath, which were not excusable. And a few examples of giving in their answer without Oath, upon this reason, are of great weight against many that shewed that they were voluntary sworn; and these orders which were compulsory, are of so late time, and of so weak power, that they cannot at all take any right from the Baro- nage which was before settled in them.

*Examined as Plaintiffs in Actions of Debt up-
Arrearages of Accompts.*

3 H. 6. fol.
43. & 44.

BY the Statute of 5 Henry 4. cap. 8. in Actions of debt upon Arrearages of ac- counts, the Judges have power to examine the Attorney of the Plaintiff, or whom they please, and this examination was meant, and hath been practised upon Oath; yet in action brought by the Lady of *Abergaven- ny*, being a Baroness, against another in the time of *Henry* the Sixth, when the Coun- sel of the Defendant desired the Plaintiff might be examined, *Cockanie* the Justice said, that they should not do well to make her, being a Baroness, come to be examined. And however the Statute were general for high as well as low (as the words of the Books are) yet he saith the Law will be o- therwise, and different between another common person,

Of

Of the Form that was used in swearing of Spiritual and Temporal Barons.

IN the form of swearing the promissory Oath, a difference hath been amongst the Barons of Parliament, the Temporal Barons under *Henry* the 7. swear with their hand upon the Book, the Spiritual with their hand upon their Breast, first the one *tactis* the other *visis Evangelis*: Antiently this Oath was taken by the Lords in the house upon the Archbishops Cross. To this day the Spiritual Lords have challenged it, and sometimes have used to swear *visis*, only as a thing to be done by the privilege of the Church. But there is the Testimony that shews, that all the Bishops in a Provincial Synod did swear here their *Furamentum corporale*, which is *tactis*, and howsoever if it be a privilege of Nobility in some other States, or of Gentry, to depose by writing without a corporal Oath, as in *Bohemia*, *Austria*, *Bavaria*, &c. yet there is no sufficient certainty with us for an established difference of form in swearing.

Rot. Parl. 1
H. 7. part.
1 M. 14 M.
15. Parl 15
E. 2. N. 43.
Circa E. 2.
de Templo
in Anonymi
Chron.

Gal. observ.
prac. 100.
fol. 22.

CHAP. II.

Trial by Peers.

Not in
Appeals.

10 *Eliz.*

4. b. lib. in
vass. tit.

Appeal de
mort. 7.

Stamf. &c.

/ 1 H. 4. 1. an.

10. 4. 6.

12 E. 4. 12.

an. *Stamf.*

lib. 2. cap. 1.

Cooke lib. 9.

fol. 20. b.

stat. 4. fac.

cap. 1.

IN all cases of Treason or Felony, or imprisonment of either of these offences, a Temporal Lord of Parliament is to be tryed only by his Peers, if arraigned by Indictment *per Judicium parium suorum*, or of 12 or more Temporal Barons of Parliament. This holds as well in all cases made Treason or Felony by Statute, as received anciently to be so by the Common Law, as Justice *Stam-*
ford expressly affirmeth, although usually in Statutes which make Treason or Felony, a special clause be inserted for Peers to be tried by their Peers; as also to the now trial, where perhaps more need was of such a clause, upon the Statute of remainder made for trial of offences committed by the *English* in *Scotland*, it is added, that if the Offender be a Peer of the Realm, then his Trial shall be by his Peers: and this is clear for all Temporal Barons and their Ladies; but is hath been doubted whether the same Law be in case of Trial of Spiritual Barons or no; and without doubt one special Argument among others, hath been made from

from the name of Peers, some concluding thus : Spiritual Barons are no Peers, therefore not to be tried by their Peers ; others for the other part, thus, Spiritual Barons are Peers , therefore to be tried by their Peers ; but of these two Arguments, the first is false in matter, the second in form.

For the first, it is true and plain, that Spiritual Lords have been Peers, and of the antecedent false : the Testimonies justifying them to have been so, are very frequent in the Bish. of *Winchester's* case, who departed from the *Parliament* at *Salisbury*, about the beginning of *Edward* the third, and was questioned for it afterwards in the Kings Bench ; he pleaded to the Declaration, *Quod ipse est unus è paribus Regni & Prælati*, &c. and in that short disputation of the case which is left in the year Books, he is supposed clearly both by the Court and Council to be a Peer. So afterwards under the same King, in a Writ of *Wards* brought against the Bishop of *London*, he pleaded to issue, and the Defendant could not have day of Grace, for he said (as the words of the Book are) that a Bishop is a Peer of the Land. *Et hæc erat causa*, &c. And in a like case upon an Action of *Trespass* against the Abbot of *Abyndon* who was one of the Lords Spiritual, day of Grace was denied

*Stat. 20 H
6. cap. 9.
Cook, lib. 6.
fo. 52. b.*

*Pas. 3 E. 3.
coram rege
Rot. 9. Rep.*

*3 E. 3. fol.
186. pl. 28.*

*13 E. 2. tit.
Enquest. 43.
tit. Chal.
lenge.*

Plowden
Complint
Et c. 117.
8 E. 3. Ret.
23. coram
Rege.

denied against him, because he was *Peer de la terre*. So expressly upon the Question of having a Knight returned into a Jury where a Bishop was Defendant in a *Quare impedit*, the rule of the Court was, that it ought to be so, because the Bishop was a Peer of the Realm. So the Judgment given against the Bishop of *Norwich* in the time of *Richard the second*, he is in the Roll expressly allowed to be a Peer, for he had took exceptions that some things had passed against him without assent or knowledge of his Peers of the Realm. To which exception, the answer was, It behoves you not at all to touch your Prelate of only certain Misprisions, which you as a Souldier of the King, &c. have done and committed, &c. Here is to be avoided that challenge of *Stafford* Archbishop of *Canterbury* under *Edward the Third*, when upon his being excluded the Parliament, he thus challenged his place. *Ego tanquam major pars Regni post Regem vocem habens jure Ecclesie mee tantum vendico, & ideo ingressum in Parlamento peto*; the same is justified by the Clergy touching their *jus paritatis* before recited at large and entered in the Parliament Roll. And in the Assignment of the Errors under *Henry the Fifth*, for the reversal of the Attainder of the Earl of *Salisbury*, one Error is assigned, that
Judg-

Judgment was given without Assents of the Prelates, which were Peers in Parliament; and that although that were adjudged to be no Error, yet it hath been allowed clearly in the Roll, and the Petition, that they were Peers. So in an Act of Parliament under the same King, the Bishops and Archbishops, and Archbishops of *Ireland* are called Peers of that Kingdom; and divers other passages occur touching this name of Prelate; neither could any Scruple be further made of it, until the passing of an Act of this Parliament, 17 *Car.* 1641.

*Stat. 4 H.
5. ca. 6. 33
H. 8. Trial,
141.*

But as this is clear, that they were Peers, so also it is clear, that they were not by the Law to be tried as Temporal Barons by their Peers; and the conclusion of the contrary drawn (as before) out of that, that they have been Peers, is wholly without consequence, this having been a Point of the Common Law, as it is distinguished from Acts of Parliament, which falls out generally to be only the known and received Custom within the Kingdom, if the Practice and Custom within the Kingdom be therein observed, the point of Law may be soon resolved. In the Practices and Customs divers Bishops are found to have been arraigned, and legally tried upon Capital Offences,
yet

yet all that have been so, have had their Trial only by common Juries, and whether by Statute any alteration be of this Common Law, shall presently be examined, there being many Bishops now to be tried.

That Practice and Custom appeareth in particular examples found from the time of *Edward* the Second, to the Age next before us, thus collected: *Adam*, Bishop of *Hereford*, under *Edward* the Second, was indicted of divers Felonies, and of joyn-
 ing with *Roger Mortimer*, he is arraigned in the Kings Bench; and upon question how he will be tried, he saith, *Quod ipse est Episcopus Heref. ad voluntatem Dei & summi Pontificis, & quod materia prædicta Articulorum sibi imposuit, adeo ardua est, quod ipse non debet in Curia sic super prædictis sibi impositis respondere, nec inde respondere potest absque offensa divino & sanctæ Ecclesiæ.* Hereupon day is given over, and then the Indictment is brought into the Parliament, where upon his Arraignment he gives the like Answer; and *Walter* Archbishop of *Canterbury*, petit eum, & ei liberatur; and this is commanded, that he have him ready at a certain day in the Kings Bench. *Et præceptum est Vicecomiti Hereford. quod venire faciat coram Domino Rege tot & tales, &c. ad inquirend. prout moris*

Hill. 17 E.
 2. Rot. 37.
 Dorse co-
 ram Rege
 & Rot.
 Rom. m. 5.

moris est, &c. And a common Jury is returned which finds the Bishop guilty; whereupon he is committed to the Archbishop and convict, and his Lands and Goods are seized into the Kings hands.

Here was the Bishop tried by a common Jury, although it appears both in the Record, and in the History of that time, that the whole Clergy earnestly in-
deavoured to have kept him from Con-
viction; but no pretence of any right of *Thomas*
Trial by Peers is once mentioned in this *Walsing-*
behalf, though other Complaints are full *ham fol.*
enough expressed against the whole Pro- *109. Tran-*
ceedings. *sert.*

Under Edward the Third, *John de Isle* Trial 30
Brother to *Thomas Hen* Bishop of Ely, *E. Rot. 11.*
was indicted in *Huntington-shire*, That *Rep.*
he, with divers others, *per assensum &*
procuracionem Episcop. 28 E. 3. die Lune
post Festum Sancti Jacobi, burnt the house
of the Lady Wake at Celne, by *Sommer-*
sham, & quod *prædictus* Thomas Episco-
pus sciens *prædictam* combustionem per *præ-*
dict. *servientes* suos esse factam *dictos* *ser-*
vientes apud *Sommersham* postea receperunt,
&c. And also it was found before the
Sheriff and Coroner, that 29 Edward the
Third, the Bishop was guilty *de assensu*
of the Murther of one *William Holme*,
slain

slain by Ralph Careless and Walter Ripton called Little Watt, upon Malice conceived against Holme, because he followed the Suit of the Lady Wake; the Principals were attainted by Outlawry, the Bishop was arraigned, and upon question how he would be tried, *dicebat quod ille est membrum Dom. Papæ, & quod ipse ab ordinario suo, viz. venerabili Patre Domino Simono Archiepiscopo Cantuari. Angliæ Primat. respondere non potest. Et super hoc idem Archiepiscopus præsens hic in Curia petit, quod dictus Episcopus Eliensis de Feloniis prædict. sibi impositis hic coram Laico Iudice non cogatur respondere; & ut sciatur inde rei veritas per inquisitionem patric, &c. præcept. est Vicecomiti Huntingdon, quod venire faciat coram Domino Rege in Octab. Sancti Mich. &c. ubicunque, &c. 24. de Just. de Sommersham, & idem dies datus est Episc. &c. Ad quem diem coram Domino Rege venit prædict. Episc. in propria persona, & similiter jurat. veniunt qui electi, tricati, jurati & onerati, si idem Episc. de assensu prædictorum Rand. & Walter. & de recept. eorundem sit culpabilis, nec non dicunt super Sacramentum suum quod idem Episc. est in nullo culpabilis, sed dicunt quod idem Episc. post Feloniam receperat ipsos apud Sommersham, sciens ipsos Feloniam fecisse. Idè inquiratur de bonis, catallis, terris & tenementis, &c.*

&c. Et super hoc prædictus Archiepisc. præsens in Curia petit ipsum tanquam membrum Ecclesiæ sibi liberari, & ei liberatur custodiend. prout decet ; and Writs were sent out to the Sheriffs of all Shires where he had Goods or Lands, to certifie them for the King's Benefit ; and in this Record it is observable, that the Jurors were tried, which proves that the Bishop had his Challenges to them at his Trial.

About the beginning of Henry the Fourth, Thomas Merke Bishop of Carlisle, was indicted of Treason before Thomas Earl of Warwick, and other Justices of Oyer and Terminer in Middlesex; the Bishop standing before committed to the Tower for the same Offence. Et hoc Justiciar. prædict. recognit. mandatum est Constabulario Turris prædictæ vel ejus locum tenenti, quod corpus ejusdem Episc. habeant, vel alter eorum habeat coram præfatis Justiciariis apud Turrim prædictam die Mercurii ex tunc proximo sequente ad respondendum Domino Regi de productionibus, &c. And the Precept est Vicecomiti London. quod tunc venire faciat coram præfat. Justiciariis apud Turrim prædict. tam Aldermannos & Cives, quam alios probos homines de vicineto Warder. prædict. i. Baynards Castle & Dougate qui præfat. Episc. nullæ affinitate attingunt ad faciendam tunc ibidem deliberationem de dicto

Episcopo, prout moris est secundum legem Regni Angliæ, ad quem diem & locum; the Bishop is brought before them, and a Writ comes from the King to the said Justices, reciting, that licet in Statuto apud Westminsterium nuper edito, inter cætera continetur, quòd nullus Archiepiscopus, nec Episcopus coram Justiciariis nostris occasione alicujus criminis impetratur absque speciali præcepto nostro quousque aliud remedium inde foret ordinatum de advisamento tamen Consilii nostri vobis mandamus quòd si alicui Archiepiscopi, vel Episcopi coram vobis impetiti vel judicati existunt, tunc ad deliberationem ipsorum procedatis prout de jure & secundum legem Regni nostri Angliæ fore videritis faciendum, Statuto prædicto non obstante. Teste meipso apud Westminsterium 28 die Januarii. Anno Regni nostri primo.

This Writ being read in the Court, the Bishop was demanded how he would be tried: He first stands upon the Priviledge of the Church; to whom the Justices reply, That the Offence was so high, that he must answer them with Protestation of saving the Liberties of the Church; he pleads Not guilty. *Et inde de bono & malo ponit se super patriam, inde fiat, inde jurat, hoc instante die, &c.* The Jury finds him guilty, but the Justices being not advised

vifed of their Judgment, return him to Prifon: The Record was afterward removed in the Kings Bench, and the Bifhop renders himfelf to the Prifon of the Marfhalsea; and then being asked, if he had any thing to fhew why Judgment fhould not be given on him, he pleads his pardon, and it is allowed him.

To thefe Prefidents a learned Judge in Queen *Mary's* time faith, divers were agreeable; among which are fpecially to be accounted thofe of the Bifhop of *Rochefter* in the time of *Henry* the Eighth, and of *Craumer* Archbifhop of *Canterbury* under Queen *Mary*, both tried by common Juries. Neither is there any example extant from the firft memory of a legal Trial of Bifhops, which is under *Edward* the Second, that teftifieth any Trial by Peers belonging to a Bifhop; and accordingly hitherto it was taken clearly by that learned Judge of Queen *Mary's* time, that no ancient Statute fpeaking of Trial by Peers, hath been put in ure to extend to a Bifhop or Abbot, although they enjoy the name of Lords of the Parliament; for they have (as the words are) this name of Bifhop or Abbot *ratione Officii*, being not chofen in Parliament in refpect of their Nobility, but in refpect of their Poffeffions, the ancient Baronies annexed to their Dignities,

L

accord-

Stamf. lib.
3. fol. 133.

Tempore
H. 8. pro
Trial 142.

Stamf. lib.
3. pag. 135.

*Cambd. in
Ordi. Angl.*

according to which there are divers Presidents, whereof one was in the time of *H.* the 8. where also it is as judiciously and modestly affirmed by a most learned Man of this Kingdom, That the Spiritual Lords enjoy all legal Priviledges, as the Temporal Barons do, saving only this Trial by Peers.

That which may be here objected out of the Statute of the Grand Charter, wherein every man ought to be tried by his Peers, *id est*, *judicium parium suorum*; or out of the Statute of 25 E. 3. by which all Treasons are to be tried by men of the same Condition of which the Offender is, may easily be answered; for both these ancient Statutes are now to be interpreted, as it is clearly taken in continual Practice, and in the Books, according to the known use of the legal Proceedings, and not by literal Interpretation of the words, as it is plainly seen in both of them: For all Gentlemen, Esquires, Knights, Batchellors, and Bannerets, and at this day Bannerets are accounted Peers, not only amongst themselves, but also to all other men of the lowest condition, which yet cannot be out of the force of the word, only the like appeareth in that *non amercientur Comites, vel Barones, nisi per pares suos*. And it is shewed in the Title of Amerciaments, wherein

*1 Mar. Dy-
rr fo. 986.
Hollenhead
Cron. fo.
1749. Sur-
pleis. case.
Coo. fo. 40.
3.*

wherein that which the Statute refers to Peers, is done so by Judges. And this of Bishops referreth to those Statutes, is only to be adjudged according to Use and Practice, which is the best Interpreter of the Statutes, and not by the meer Interpretation of the word Peers.

And it is most likely, that if any such Parl. 22
H. 6. Right had anciently belonged to them, not only they themselves, but the Temporal Baronage under *H. 6.* protesteth by the mouth of Viscount *Beaumont* for their Trial by Peers, when *William de la Poole* put himself upon the King, and not on his Peers, in such sort as those Bishops put themselves on the Pope, and not upon any legal Trial.

But one particular case is here to be added, touching this right, singled by it self, Stat. 1 E.
117. c. 1. that is, Trial by Peers upon the third Offence against the Statute of Service and Sacraments, under Queen *Elizabeth*, for the known Trial by Peers, is in Cases of Treasons or Misprisions, or one of them. And Trial by Peers saved to the Baronage in the Statute of new Treason or Felony, hath reference only to the known use of such Trial ; so that in those new Treasons or Felonies, such as for other Offences, which were before Treason or Felony, were to be tried by their Peers, are likewise

wife (and none else) to be tried by their Peers for new Treasons or Felonies, and therein the Spiritual Lords are equally excluded ; but this of the third Offence against that Statute , is neither Treason , Felony , nor Misprision , but a Trespass , punished only by Forfeiture of Goods and perpetual Imprisonment. In which case this Act saith, without reference to the use of Trial by Peers, as it is usually expressed in other Statutes, that all and singular Lords of the Parliament for the third offence shall be tried by their Peers.

CHAP. III.

Scandala Magnatum.

IF any person shall divulge false Tales of any of the Lords of Parliament, by which dissention may be betwixt the Commons and them, the Offender is to be imprisoned until he bring forth the Author ; but this also is communicated to the greater Officers of the Kingdom.

CHAP. IV.

*Process against them in English Courts, by Bill
and Answer.*

THE Course of the Chancery is, and of the late *Star Chamber* was, That the Chancellor writes to the Lords of Parliament, and sends out *Subpœna's*, and usually his Letters are prayed in the Bills that are exhibited against them.

But whether upon a Baron's not appearing on a *Subpœna*, an Attachment may be awarded, hath been a question; neither do I find it clearly resolved otherwise than that in later times, the Practice is, that it may: But in the time of Queen *Elizabeth*, in a Suit between *Taverner* and the Lord *Cromwel*, the Defendant disobeying an Injunction in the Chancery, it was questioned what course should be taken against him; and upon good and deliberate advice taken by the Court, having the opinion of some of the Judges herein, an Attachment was awarded to the Sheriff of *Norfolk*, and returned so, and the Sheriff had his Costs for bringing him. This Attachment was awarded in *Michaelmas Term*, and in *Hilary Term* he was returned so;

*Lawrence
Jennins
l. 2. a.
Crompt.
J. 1. p. 3.
33.*

but afterwards there being a Parliament began in *May*, and ended in *June*; the Lord Chancellor complained of it, and it was pretended that it was gotten in Court in the absence of the Lord Chancellor, and advice was had with Councill, and Judges, and it appears not (as the words of the Journal book are) that by the Common Law, or by any presidents of the said Court of Chancery, it was warranted that the person of any Lord having place and voice in Parliament (in the like case) in the said Court of Chancery before this time had been attached, and therefore they took it to be against the Priviledges of the Lords of this Kingdom, and he was discharged.

Dyer, Parl.
Jun. 19. Eli.
& Dyer fo-
314. &
315.

Rot. Parl.
3 H. 5. parl.
1. M. 2. N.
45. Rot.
Parl. 15. H.
6. N. 25. &
Parl. 2 H.
2. art. 69.

But for that of attachment upon *Sub-penas*, and in the course of proceeding against noble men by such Writs or Bills as are used in the Exchequer, Chancery or elsewhere, it is not likely that any certain Course of ancient Common Law, or proceeding in equity can be found to justify it at all, either against them or any other persons, beyond the time of *R. 2.* unto whom *John Waltham*, Bishop of *Salisbury* and Chancellor of *England*, brought in the Writs of *Subpena*, & *ceteris de causis*, in the Chancery and the Exchequer, by example whereof other Courts have used them,

them, against which the Commons passed a Bill in Parliament under *Henry* the fifth, but the King would not give assent to it. The like is found under *Henry* the sixth, and *Henry* the fourth.

CHAP. V.

Their number of Chaplains qualified.

BY the Statute of Pluralities, every Archbishop may have eight Chaplains, that may take Dispensations for a Plurality; but for the plenty of Schollers of good ability in Arts and Learning, it is like the Law in these points will be altered, that they all have and none want convenient benefice.

Every	{	Marquiss and Earl,	{	5	{	Chap- lains.	
		Viscount,		may			4
		Bishop,		have			6
		Temporal Baron,		3			

Every	{	Dutchess,	{	being	{	two.
		Marchioness,		Widdows		
		Countess,				
		Baroness,				

C H A P. VI.

Their retaining of Strangers.

A Baron of the Parliament may keep six strangers born out of the Kings obeyfance at one time; whereas another man may retain not above four.

C H A P. VII.

Clergy.

Under *Edw.* the sixth, a priviledge was given to the Nobility, that in all cafes where a common perfon, as a Clerk convict, shall and may have benefit of his Clergy; and in all cafes where priviledge of Clergy is restrained, or taken away by that Statute, except in willful murder, that is, Burglary, Robbery, by or near the Highway, stealing of Horses, and Sacriledge, a Lord of the Parliament and Peer of the Realm should at the first offence, only of common grace, without prayer, have benefit of the Clergy, and stand as a Clerk convict to make purgation, although he cannot read.

But

But as *Stamford* notes, in all other cases, in which Clergy is taken away since that Act, a Baron of the Parliament is in the same case as any other common person is; And by Acts made since, it was taken away generally.

Parl. Cor.
lib. 2. fo.
130. a.

1. For stealing of Horses, 1 E. 6. cap. 33.
2. Robbing in dwelling houses, &c. in or near the High way, 5 E. 6. c. 9.
3. Burning of Houses or Barns, petty treason, 5 Phil & Mar. c. 4.
4. Stealing of 5 s. in any dwelling house or any place adjoining, 39 Eliz. cap. 15.
5. Stealing of 12 d. or more without the knowledge of the person, &c. 8 Eliz. cap. 4.
6. Burglary and Rape, 16 Eliz. c. 7.
7. Killing one that hath no weapon drawn, 1 Jac. cap. 9.

C H A P. VIII.

Their Liberty of hunting in the Kings Forests.

QUicumq; Archiepiscopus Comes vel Baro veniens ad nos, per mandatum nostrum transiret per forestam nostram liceat ei capere
unam

unam bestiam vel duos, per visum Forestarii si præsens fuerit, sin autem faciat cornare, ne videatur hoc furtim facere, hoc liceat eis redeundo facere sicut prædict. est: and this hath been interpreted to the coming of a Lord by summons to the Parl. by Process out of the Chancery, Kings bench, or otherwise, where the return is *Coram Rege*.

CHAP. IX.

Amerciaments.

IN case of Amerciaments of Barons of Parliament upon Nonuits, or other Judgments, ending in *misericordia*, there is a special course, both for the sum and the way of ascertaining of it, which differs from the Amerciaments of common persons.

For the sum, the Amerciaments of an Earl, or Spiritual, or Temporal Baron is equal, that is, 5 *l.* of a Duke, 10 *l.* and the selling of this is by the Kings Justices, before whom the action dependeth; the Justices in this place supplying the room of Peers, by which according to the grand Charter they are to be amerced, as expressly it is affirmed in the Judgment under *H. 6.* against the Earl of *Northumberland*, where the words of the Justices are, Inform much

38 E. 3. fol.

39 a. 24 E.

2 f. 31 b. 1

H. 6. 7. d. 9

H. 6. f. 2.

b. 19 E. 4

f. 9. a. 21

E 4. f. 77.

b.

much as an Earl is a Peer of the Realm, ^{1 H. 6. f. 7.} he shall be amerced by his Peeres, accord- ^{3. Cook l. 8.} ing to the Statute, and therefore we put ^{f. 4.} not the Amerciament incertain. ^{Greffey's Case.}

And thence and thus is the grand Charter to be understood that saith, *Comitis & Barones non amercientur, nisi per Pares suos*, but continual usage hath thus (as before is shewed) interpreted that priviledg, and so hath the practise been, and thence was it under E. 2. a Writ was directed to the Justices of the Commonpleas that they should not amerce the Abbot of *Crowland*. ^{C. 4. li. 3. De Cor. c. 1. fol. 116. b.} *tanquam Baro*, because he did not hold ^{Claus. 15. E. 2. n. 12.} *per Baroniam aut partem Baronie*.

For this of Amerciament, while there were no other Titles of greater Nobility but Earl and Baron, which was in the time of E. 3. who created the first Duke in England, as Rich. the 2. the first Marquis; and H. 6. the first Viscount, and the Amerciaments of the Lords of the Parl. were all at 5 *l.* whence also is generally so affirmed in the Statutes of *Ireland* under H. the sixth, that every Lord that is called L. of Parl. in all places as well personal as real, in which amerciaments do lye, shall be amerced at 100 s. But when other Dignities were made, and it seems according to the proportion of the reliefs, paid by those new dignities, for a Duke is to be amerced at double

double the sum of an Earl, that is, 10 l. as his relief is double, which is 20.

CHAP. X.

No Process in civil actions to be awarded against the body of a Baron.

NO Baron of the Parliament or Baroness is to be arrested by *Capias* upon action of debt, account, trespass, or the like, but they are to be distrained only and pay issues, returned for an appearance. The reason of this was anciently, because the *Capias* in such Cases, goes out only upon *nihil habet*, returned by the Sheriff, which could not be for a Baron, who was ever to be supposed to be seised of his Barony, by which he might be distrained and lose issues. Although the reason fails now in those that have not more than the names alone of their Baronies, yet the same Law still remains, but this limited to actions between party and party; for in Cases of rescues, felonies, or the like, where the offence is immediately to the King, a *Capias* lies against a Baron of the Parl.

And it is as other priviledges which are legal in *England*, limited also to the Barons of the *Part*. of *England*; for it appears under

11 H.14.2.
Cooke lib. 6.
fol. 52. b. 27
H. 8 f. 7. a.
14 2. 22. b.
29. Aß. PL.
33. 14 Eliz.
Dyer. fol.
315. Trin.
1 Hen. 4.
Rot. 8. Co-
ram Rege
Cromw.
libr. Introit.
Et tit. Er-
ror. utlary
20. 13 R. 2.
tit. return
del. ut. 74.
10 H. 4. tit.
process. 44.
198. 1 H. 5.
fol. 22. b. 20.
Aß. 21 E. 3.
fol. 55. b.

der R. 2. that in an action of debt, a *Capias* was awarded against the Countess of *Ormond*, being one *Irish* Baroness, and participating of her husbands dignities as our Ladies in *Eng.* neither can a Baron or *Ireland* be tried here by the Peers of *Eng.* for they are not his Peers, no more than the *L. Zanchar* might, being a Baron of *Scotland*, who was indicted and arraigned only by the name of *Rob. Creighton* Esquire, and upon this reason, that he was no Baron of *Parl.* tried by a common Jury. Thence it is also that an Earl, Baron, or Duke of *France* coming into *Engl.* by the Kings safe conduct, shall not in any legal proceedings be stiled so, as appears in the time of *Edw.* the 1. in the case of the E. of *Richmond*, being then Duke of *Brittain*, and in the case of *Sir John Douglasse* under *Edw.* 39 *Eli. f.* the 4. And the reason, why *S. Gilbert Humfravil*, in the time of *Edw.* the 3. was legally to have his title in writs of Earl of *Anguish*, was because that in that age the E. of *Anguish* by that name was L. of the *Parl.* as it is expressly noted in our Year-books. 35. b. & Claus. 39 E. 3. m. 2.

And this difference it seems hath been ere between Temporal dignities, and spiritual, that in regard the temporal state of *England* was ever held as severed and distant from other States, not at all communicating with them in civil government.

vernment. Therefore foreign Dignities which are of the Civil part of States, had no respect given them, as appears in the examples already brought.

19. E. 3. tit.
Trial 57.

Extra. tit.
derenuntia.
cap. 9. ad
Supplicatio-
nem.

But on the other side, in Dignities Spiritual, because there was anciently through Christendom supposed an unity in the Church; so that *England* with foreign Nations, and they with *England* (as members of one body had a mutual reference to each others Countrey) was legally valued, as Bishops in *England*, as may be seen in that case of the Bishop of *Utrecht* (for this is the right Name, though it be printed *Urston*) under E. the 3. where being made Bishop of *Utrecht* makes a Prebend of *England*. So the Title of Cardinal was usually given in legal proceedings to such as had that dignity in *England*, whence also the Archbishop of *Raguse* being Parson of a Benefice in the Bishoprick of *Carlisle*, under King *John*, was (it seems) to have been accounted here also an Archbishop for dignity, though not for Jurisdiction.

CHAP. XI.

*A Knight to be returned upon every Pannel
where a Baron is Party.*

IN every Jury impannelled between any Baron of Parliament and other person whatsoever, one Knight at the least is to be returned, which failing, the array may be quashed by challenge; a testimony hereof as well for Spiritual as Temporal Barons, is frequent.

13 E. 3.

tit. Chal-

leng. 115.

Et tit. En-

quest. 43.

Ploud Com.

f. 117. Et

1 Et 2

Phil. Et

Mar. Dyer f. 107. 63. Et 4 El. idem f. 208. b. 27 H. 8. 22. b.

CHAP. XII.

No day of Grace against a Baron.

IF a Baron of the Parliament be Plaintiff or Defendant in any Action, and the Plaintiff or Defendant pray a day of Grace, he shall not have it against him; and this is expressly affirmed in the Books.

22 E. 3. f.

9. a. 27 E.

3. f. 88. b.

27 H. 8.

f. 22. b.

CHAP.

CHAP. XIII.

Making Deputies of Places of Trust committed to them.

*Te. 7a. f.
40. Cook.
part 9.*

OF late years it was agreed in the case of Gilbert Earl of Shrewsbury, that whereas the Office of Stewardship was granted to the Earl of Rutland, without giving power to make a Deputy (and this by Q. Elizabeth) that yet he might exercise the same Office by Deputy, by reason of the necessity that is supposed in the Law to be, of the Earls attendance upon the King, and the Government of the Kingdom; the same reason is, it seems, for all Barons.

F I N I S



